

June 3, 2008

RICHARD STEVENS

1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS

3 ROYAL SLEEP PRODUCTS, INC.
4 a Florida Corporation, Case No: 1:07 CV 6588
5 Plaintiff,

6 v.

COPY

7 RESTONIC CORPORATION,
8 an Illinois Corporation,
9 RESTONIC MATTRESS CORPORATION,
10 an Illinois Corporation,
11 SLEEP ALLIANCE, LLC,
12 a Delaware Limited Liability Company,
13 ROYAL BEDDING COMPANY OF BUFFALO,
14 a New York Corporation,
15 JACKSON MATTRESS CO., LLC,
16 a North Carolina Limited Liability Company,
17 CONTINENTAL SILVERLINE PRODUCTS L.P.,
18 a Texas Limited Partnership,
19 STEVENS MATTRESS MANUFACTURING CO.,
20 a North Dakota Corporation,
21 TOM COMER, JR., an individual,
22 DREW ROBINS, an individual, and
23 RICHARD STEVENS, an individual,

24 Defendants.

25 -----
26 TELEPHONIC DEPOSITION OF RICHARD STEVENS

27 June 3, 2008

28

29 A p p e a r a n c e s:

30 For the Plaintiff (Telephonically):

31 ZARCO EINHORN SALKOWSKI & BRITO, P.A.
32 Bank of America Tower
33 100 Southeast 2nd Street, Suite 2700
34 Miami, Florida 33131

35 By: MELISSA L. BERNHEIM, ATTORNEY AT LAW
AND
ROBERT F. SALKOWSKI, ATTORNEY AT LAW

June 3, 2008

RICHARD STEVENS

1 A p p e a r a n c e s: (Cont'd) 2

3 For the Defendants Restonic Corporation and
4 Restonic Mattress Corporation
(Telephonically):

5 BURKE, WARREN, MacKAY & SERRITELLA, PC
6 330 North Wabash Avenue, 22nd Floor
Chicago, Illinois 60611
By: FREDERIC A. MENDELSON, ATTORNEY AT LAW

7

8 For the Defendants Continental Silverline
9 Products, L.P., Jackson Mattress Co., LLC,
Royal Bedding Company of Buffalo, Sleep
10 Alliance, LLC, Drew Robins and Tom Comer,
Jr. (Telephonically):

11 SMITH & AMUNDSEN, L.L.C.
12 150 North Michigan Avenue, Suite 3300
Chicago, Illinois 60601
By: THOMAS J. LYMAN, III, ATTORNEY AT LAW

13

14 For the Defendants Stevens Mattress
15 Manufacturing Co. and Richard Stevens:
PEARSON CHRISTENSEN & CLAPP, PLLP
16 P.O. Box 352
Grafton, North Dakota 58237-0352
By: DANIEL L. GAUSTAD, ATTORNEY AT LAW

17

18 For the Defendants Continental Silverline
19 Products L.P. and Drew Robins (Telephonically):
FULBRIGHT & JAWORSKI, LLP
20 1301 McKinney
Suite 5100
21 Houston, Texas 77010-3095
By: ANDREW S. FRIEDBERG, ATTORNEY AT LAW

22

23 Also Present: Christian Miller

24 Taken By: Ruth Ann Johnson, RPR

25

4

1 . . . The following is the Telephonic
2 Deposition of RICHARD STEVENS, taken at the
3 request of the Plaintiff in the above-entitled
4 cause, pending in the United States District
5 Court, Northern District of Illinois, pursuant
6 to Notice and the Federal Rules of Civil
7 Procedure, before Ruth Ann Johnson, RPR, a
8 Notary Public within and for the State of North
9 Dakota, at the office of RUTH ANN JOHNSON -
10 COURT REPORTER SERVICE, 600 DeMers Avenue,
11 Suite 300, Grand Forks, North Dakota, on
12 Tuesday, June 3, 2008, at 12:30 o'clock p.m.,
13 at which time counsel appeared as hereinbefore
14 set forth

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1	I N D E X	3
2	DEPONENT:	PAGE NO.
3	RICHARD STEVENS	
4	Examination by . . . Ms. Bernheim	5
5	Examination by . . . Mr. Gaustad	67
6		
7	EXHIBITS	
8	No. A -- Copy of Articles of Incorporation	
9	No. B -- Copy of Amended and Restated Sublicense Agreement	
10	No. C -- Copy of Restonic Mattress Corporation	
11	No. D -- Copy of VISA statement	
12	No. E -- Copy of Letter of Intent	
13	No. F -- Copy of SFG invoices	
14	No. G -- Copy of A. Lava & Son Co.	
15	No. H -- Copy B & C International	
16	No. I -- Copy of Restonic Upper Midwest Sleep, LLC invoices	
17	No. J -- Copy of Restonic Executive Bulletin	
18		
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24		
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5

1 R I C H A R D S T E V E N S,

2 a Defendant, of Grand Forks, North Dakota,
3 called as a witness by the Plaintiff, being
4 first duly sworn by Ruth Ann Johnson, RPR, a
5 Notary Public within and for the State of North
6 Dakota, was examined and deposed on his oath as
7 follows:

8

9 EXAMINATION

10 BY MS. BERNHEIM:

11 Q. Good afternoon, Mr. Stevens, my name
12 is Melissa Bernheim. I'm joined with my
13 colleague, Robert Salkowski, we're attorneys
14 with Zarco, Einhorn, Salkowski & Brito, and we
15 represent the plaintiff in this matter.

16 I'm just going to ask you, I
17 recognize that this is kind of difficult,
18 because we are doing this telephonically,
19 obviously face to face is always easier, and
20 also, because we're on a conference call,
21 there's a little bit of a delay, so I'm going
22 to do my best not to talk over you, and I'm
23 sure you'll do the same, so that the court
24 reporter can accurately record the testimony
25 that, that you're about to give.

Ruth Ann Johnson - Court Reporter Service

(701) 775-4092

June 3, 2008

RICHARD STEVENS

6

1 The first question I'm going to ask
 2 you is whether or not you've ever had your
 3 deposition taken before?
 4 A. No.
 5 Q. Okay. So let me just give you a
 6 little bit of a, guidelines on how this works.
 7 I'm going to ask you a series of
 8 questions to which you'll give answers to the
 9 best of your ability. And really important,
 10 because it's telephonic, I need your answers to
 11 be audible. That's two-fold, one so that I can
 12 hear what you're saying and, two, so that the
 13 court reporter can accurately record the
 14 testimony you're giving. It's very difficult
 15 for her to record uh-huh, huh-uh, nods of the
 16 head, etcetera, and because I can't see you,
 17 it's obviously more difficult for me.
 18 When I ask you a question, I'm going
 19 to assume that unless you ask me to rephrase or
 20 explain better, that you understand the
 21 question.
 22 At any point in time, if you don't
 23 understand the question, please feel free to
 24 let me know and I'll be happy to rephrase it.
 25 In addition, for any reason, if you

7

1 should need a break or something, just let us
 2 know and we can certainly accommodate that.
 3 Other than that, the only other
 4 question I would ask is if you're feeling well
 5 today and if you're on any medications that
 6 might interfere with your ability to testify?
 7 A. I'm feeling fine and -- (no further
 8 response.)
 9 Q. Okay. Excellent. So then we're
 10 ready to start.
 11 Mr. Stevens, did you, in preparation
 12 for your deposition today, did you, did you do
 13 anything in particular?
 14 A. I looked over the questions and the
 15 responses.
 16 Q. When you say questions and
 17 responses, are you referring to the request for
 18 production?
 19 A. Yes.
 20 Q. Did you, besides your lawyer,
 21 because I don't want to know about that, did
 22 you speak with anyone in preparation for this
 23 deposition?
 24 A. No.
 25 Q. And aside from the documents that

8

1 you provided to us in response to the request
 2 for production, did you review any other
 3 documents?
 4 A. I'm not really sure what you mean by
 5 that.
 6 Q. Well, a moment ago we spoke about a
 7 request for production that you reviewed,
 8 correct?
 9 A. Right.
 10 Q. Okay. And in, in conjunction with
 11 that request for production you, I assume,
 12 provided to your attorney certain documents
 13 which were then provided to us. Is that true?
 14 A. Correct.
 15 Q. Okay. Aside from the documents that
 16 you provided to us, did you look at any other
 17 documents today in preparation for this
 18 deposition?
 19 A. I -- to the best of my ability, no.
 20 Q. Okay. Did you review any -- do you
 21 have -- I'm sorry, strike that.
 22 Do you have a computer?
 23 A. Yes.
 24 Q. Do you use that computer to conduct
 25 your business?

9

1 A. Yes.
 2 Q. Did you review any files on your
 3 computer in preparation for today?
 4 A. In regard to?
 5 Q. In regards to this deposition or
 6 this case.
 7 A. No.
 8 Q. Okay. Did you review any e-mails?
 9 MR. GAUSTAD: Are you asking about
 10 just in preparation for today's deposition?
 11 MS. BERNHEIM: Yes.
 12 Q. (By Ms. Bernheim) All I'm
 13 questioning is in respect to preparing for
 14 today, did you review any e-mails to prepare
 15 for today's deposition?
 16 A. No.
 17 Q. Okay. Mr. Stevens, the name of one
 18 of your corporate entities is Stevens Mattress
 19 Manufacturing Company. Is that correct?
 20 A. That's correct.
 21 Q. Okay. And where is Stevens Mattress
 22 Manufacturing Company incorporated?
 23 A. North Dakota.
 24 Q. And when did you -- or when was
 25 Stevens Mattress Manufacturing Company

June 3, 2008

RICHARD STEVENS

10

1 incorporated, what date?
 2 A. I do not know. I'd have to look it
 3 up, I don't know offhand.
 4 Q. Ballpark it?
 5 A. Pardon?
 6 Q. Can you give me an approximate year?
 7 A. Well, originally, probably in 1968,
 8 '69. I'm not sure, though.
 9 Q. That's okay.
 10 And who are the officers or
 11 directors, and directors, I apologize, of
 12 Stevens Mattress Manufacturing Company?
 13 A. Myself, John Stevens and Brian
 14 Stevens.
 15 Q. Okay. Is John Stevens related to
 16 you?
 17 A. He is my nephew.
 18 Q. And Brian Stevens?
 19 A. Also my nephew.
 20 Q. Does Stevens Mattress Manufacturing
 21 Company have any offices in the state of
 22 Illinois?
 23 A. No.
 24 Q. Did it ever?
 25 A. No.

11

1 Q. What about any employees, does
 2 Stevens Mattress Manufacturing Company have any
 3 employees in Illinois?
 4 A. No.
 5 Q. Did it, at any point in time did it
 6 ever have employees in Illinois?
 7 A. No.
 8 Q. Does Stevens Mattress Manufacturing
 9 Company own any realty in Illinois?
 10 A. No.
 11 Q. Did it ever?
 12 A. No.
 13 Q. Do you personally, Mr. Stevens, own
 14 any real estate in Illinois?
 15 A. No.
 16 Q. Did you ever own any real estate in
 17 Illinois?
 18 A. No.
 19 Q. With respect to bank accounts, did
 20 Stevens Mattress Manufacturing Company ever
 21 have any bank accounts in Illinois?
 22 A. No.
 23 Q. And it doesn't currently either?
 24 A. No.
 25 Q. Does Stevens Mattress Manufacturing

12

1 Company have a Website?
 2 A. Yes.
 3 Q. And what is the address of that
 4 Website?
 5 A. Restonic dot net.
 6 Q. www dot restonic dot net?
 7 A. Right.
 8 Q. And on the Stevens Mattress
 9 Manufacturing Company Website, what types of
 10 things are on there? Could I -- strike that.
 11 Do you conduct any point of sales
 12 over that Website?
 13 A. No. There's -- it was activated a
 14 few years ago and never really been used.
 15 Q. So you don't sell anything on that,
 16 Stevens Mattress Manufacturing Company doesn't
 17 sell any product using its Website?
 18 A. No.
 19 Q. Does Stevens Mattress Manufacturing
 20 Company do any advertising?
 21 A. No.
 22 Q. So the Website itself doesn't
 23 advertise the company at all?
 24 A. No.
 25 Q. I'm now going to ask, and hopefully

13

1 your attorney has in front of him what we've
 2 marked as Plaintiff's Exhibit A, which should
 3 be a copy of the Secretary of State's
 4 documents, incorporation document for Upper
 5 Midwest Sleep LLC?
 6 MR. GAUSTAD: Yes.
 7 Q. (By Ms. Bernheim) If you could just
 8 take a second to familiarize yourself with that
 9 exhibit, please.
 10 MR. GAUSTAD: Well -- that was Dan
 11 Gaustad.
 12 Exhibit A is several pages in
 13 length, can you make sure that we all have the
 14 same document in front of us?
 15 MS. BERNHEIM: It's Bates stamp
 16 numbers SMND 0485 through SMND 0490.
 17 MR. GAUSTAD: Thank you.
 18 MS. BERNHEIM: Uh-huh.
 19 Q. (By Ms. Bernheim) Mr. Stevens, when
 20 you're ready, just let me know.
 21 A. Okay.
 22 Q. Great.
 23 So based on your view of these
 24 documents, Upper Midwest Sleep is a limited
 25 liability company. Is that correct?

RICHARD STEVENS

June 3, 2008

14

1 A. Yes.

2 Q. And that was organized under, in the

3 state of North Dakota, correct?

4 A. Correct.

5 Q. And pursuant to page -- I'm sorry,

6 document, it's Bates stamp number, it's page

7 one of Exhibit A, Bates stamp SMND 0485, it

8 states that Upper Midwest Sleep, LLC was

9 organized in, on August 28, 2006. Is that

10 correct?

11 A. That's what it says.

12 Q. Okay. What is the purpose of Upper

13 Midwest Sleep, LLC?

14 A. The purpose of Up -- the purpose of

15 Upper Midwest LL -- Sleep, LLC was to

16 consolidate and to look for an equity partner

17 in the business.

18 Q. An equity, when you say equity

19 partner in the business, can you explain what

20 you mean by that?

21 A. An equity partner, a person that's

22 willing to invest money.

23 Q. I understand that, but when you say

24 in the business, are you talking about

25 investing in Stevens Mattress Manufacturing

15

1 Company?

2 A. Upper Midwest Sleep, LLC.

3 Q. Okay. Let me back up a little to

4 help try to make things a little bit more

5 clear.

6 What is the relationship, if you

7 will, between Stevens Mattress Manufacturing

8 Company and Upper Midwest Sleep, LLC?

9 A. Stevens Mattress owns Upper Midwest

10 Sleep.

11 Q. And which entity of the two conducts

12 the business as Restonic?

13 A. No. That's -- I would not say we

14 conduct business as Restonic. We sell under a

15 licensing agreement to sell Restonic products,

16 but our business is not Restonic.

17 Q. Does Upper Midwest Sleep, LLC have a

18 license agreement or sublicense agreement with

19 Restonic?

20 A. No. It's -- no, it does not.

21 Q. So --

22 A. To the best of my knowledge. I

23 mean, there's a lot of companies here and they,

24 they change and, you know, you know, I do not

25 believe that Upper Midwest does, though.

16

1 Q. Okay. So let's back up. Stevens

2 Mattress Manufacturing Company, does Stevens

3 Mattress Manufacturing Company manufacture and

4 sell bedding products?

5 A. Yes, it does.

6 Q. Okay. And does Stevens Mattress --

7 and Stevens Mattress Manufacturing Company has

8 a sublicense agreement with Restonic, correct?

9 A. That's correct.

10 Q. Does Stevens Mattress Manufacturing

11 Company have licenses with any other mattress

12 company or have sublicenses with any other

13 mattress company?

14 A. No.

15 Q. Okay. Now Upper Midwest Sleep, LLC,

16 does that company also sell and manufacture

17 bedding products?

18 A. No. No. It -- I really don't

19 understand the question, because it's confusing

20 there to me.

21 Q. What does Upper Midwest Sleep, LLC

22 do, does it have a business function?

23 A. The business function of -- it has

24 no -- if I'm not mistaken, you know, I'm not

25 totally clear on that yet, just let me think it

17

1 through here a minute.

2 I think the only one that

3 manufactures mattresses and box springs is

4 Stevens Mattress Manufacturing.

5 Q. Okay.

6 A. That has a license under that --

7 with Restonic.

8 Q. So if Upper Midwest Sleep, LLC

9 doesn't manufacture bedding products, what does

10 it do?

11 A. It was a holding company of some --

12 I would have to go and review that, what, what

13 the real function of that was. Is.

14 Q. Who are the officers and directors?

15 I'm sorry, who are the managers and members of

16 Upper Midwest Sleep, LLC?

17 A. Richard Stevens.

18 Q. That's you?

19 A. Right.

20 John Stevens.

21 Q. Uh-huh.

22 A. And Brian Stevens.

23 Q. Okay. Now who's Don Stevens?

24 A. Brian Stevens, I said.

25 Q. All right. Wasn't there one in the

June 3, 2008

RICHARD STEVENS

18

1 middle? There was a -- oh, John Stevens, I
 2 apologize, sir.
 3 Okay. Both your nephews?
 4 A. Correct.
 5 Q. Okay. Now I just need to try to
 6 understand things. Are you, are you all
 7 members, is someone, is one party the manager?
 8 A. We're all members.
 9 Q. You're all members.
 10 And so you're a member of the LLC,
 11 but you're not quite clear what the LLC is
 12 organized to do?
 13 A. I'd have to look at and see what it
 14 was really organized to do, yes.
 15 Q. Okay. But you do recall organizing
 16 in August 2006?
 17 A. Right.
 18 Q. Okay.
 19 A. It's all really part of a, of, you
 20 know, a consolidation to get an equity partner
 21 in the business.
 22 Q. All right. Now did you ever get an
 23 equity partner for the business?
 24 A. No, we did not.
 25 Q. Are you still looking?

19

1 A. Upper Midwest Sleep, LLC is not
 2 looking for an equity partner at this time.
 3 Q. Does Upper Midwest Sleep, LLC have
 4 any offices in Illinois?
 5 A. No.
 6 Q. Has it ever, since 2006?
 7 A. No.
 8 Q. And let me just back up a second.
 9 John Stevens and Brian Stevens,
 10 where do they reside?
 11 A. In North Dakota. In Grand Forks,
 12 North Dakota. Well, Brian maybe does not,
 13 Grand Forks, he lives in Thompson, but it's in
 14 the metro area.
 15 Q. Okay. And does Upper Midwest Sleep,
 16 LLC have any employees in Illinois?
 17 A. No.
 18 Q. And did it ever?
 19 A. No.
 20 Q. What about any real estate, does it
 21 own any real estate in Illinois?
 22 A. No.
 23 Q. And it never did?
 24 A. No.
 25 Q. And what about any bank accounts?

20

1 A. No.
 2 Q. And how about Website, does Upper
 3 Midwest have a Website?
 4 A. No.
 5 Q. And does Upper Midwest do any kind
 6 of advertising?
 7 A. No.
 8 Q. Okay. Let's talk a little bit about
 9 Sleep Alliance. Mr. Stevens, are you
 10 personally a member of Sleep -- well, first of
 11 all, are you familiar with Sleep Alliance, LLC?
 12 A. Yes.
 13 Q. Okay. And are you personally
 14 involved in Sleep Alliance, LLC?
 15 A. As of today, no.
 16 Q. Okay. Were you ever?
 17 A. I was until the end of last year.
 18 Q. Okay. Now when you say I was, was
 19 it you as Richard Stevens or you as Richard
 20 Stevens, officer of Stevens Mattress
 21 Manufacturing Company, how does that work?
 22 A. As Stevens Manufacturing.
 23 Q. Was Upper Midwest Sleep, LLC ever
 24 part of that as well?
 25 A. No.

21

1 Q. And what happened at the end of last
 2 year that you were no longer a member?
 3 A. Because I was no -- I, I saw no
 4 future of looking for an equity partner in the
 5 business, and that was the whole reason for
 6 that to be formed, and nothing happened, so I
 7 withdrew from that.
 8 Q. Okay. I'm going to stop you,
 9 because I, forgive me if I'm a little confused.
 10 You mentioned just the fact that
 11 Stevens Manufacturing Company was the entity
 12 involved with Sleep Alliance. Is that correct?
 13 A. Could you repeat that?
 14 Q. Okay. You stated that it was
 15 Stevens Mattress Manufacturing Company that was
 16 the entity that was involved with Sleep
 17 Alliance, LLC. Is that correct?
 18 A. No. It was -- no, that was not
 19 correct, if that's what I said. It's Upper
 20 Midwest Sleep, LLC that was Sleep Alliance.
 21 Q. Okay. Now that makes sense.
 22 Okay. So with respect to Sleep
 23 Alliance, LLC, do you know where that entity is
 24 organized, what state?
 25 A. I believe that was Delaware.

RICHARD STEVENS

June 3, 2008

22

1 Q. Delaware.
 2 And do you know when that was
 3 formed?
 4 A. August 28, 2006.
 5 MR. GAUSTAD: You're talking about
 6 Sleep Alliance or --
 7 MS. BERNHEIM: I'm talking about
 8 Sleep Alliance, LLC.
 9 Q. (By Ms. Bernheim) Is that answer the
 10 same or do you want to change that?
 11 A. No, I think that's the date.
 12 Yeah, I believe that's the date.
 13 Q. So according to, if you look back at
 14 Exhibit A, Sleep Alliance, LLC was formed the
 15 same date as Upper Midwest Sleep, LLC, correct?
 16 A. I believe that's correct.
 17 I'd have to really, you know, you
 18 know, check documents to, you know, to triple
 19 check it or whatever, but I believe that was
 20 the dates everything was signed at that time.
 21 Q. Okay. What was the purpose of Sleep
 22 Alliance?
 23 A. It was to consolidate the businesses
 24 and look for an equity partner.
 25 Q. And when you say businesses, which

23

1 businesses are you referring to?
 2 A. There was three businesses involved
 3 in, you know, three principals involved in
 4 Sleep Alliance.
 5 Q. And who were they?
 6 A. Myself, Tom Comer and Drew
 7 Robins.
 8 Q. Now did, did Sleep Alliance, LLC
 9 have an office in Illinois?
 10 A. No.
 11 Q. Did it ever have any kind of office
 12 or, or anything in Ill -- I'm sorry, strike
 13 that.
 14 Did it ever have an office in
 15 Illinois?
 16 A. No.
 17 Q. Did it have any employees located in
 18 the state of Illinois?
 19 A. No.
 20 Q. And it, and at any time since its
 21 formation it never did?
 22 A. No.
 23 Q. Did Sleep Alliance own any real
 24 estate in Illinois?
 25 A. No.

24

1 Q. And I assume that the answer is that
 2 it never did, correct?
 3 A. Correct.
 4 Q. Did Sleep Alliance have any bank
 5 accounts in Illinois?
 6 A. No.
 7 Q. Did Sleep Alliance or does Sleep
 8 Alliance have a Website?
 9 A. No.
 10 Q. Does Sleep Alliance do any
 11 advertising?
 12 A. No.
 13 Q. What about meetings, Sleep Alliance
 14 conduct any meetings in Illinois?
 15 A. Not to the best of my recollection.
 16 There might, there might have been one last
 17 year that I was not able to attend.
 18 Q. And do you know where that would
 19 have occurred, where in Illinois?
 20 A. In Chicago.
 21 Q. Any particular reason why you didn't
 22 attend?
 23 A. I couldn't walk. I had a health
 24 issue.
 25 Q. Okay. As a member of Sleep Alliance

25

1 and representing Sleep Alliance, aside from
 2 that meeting, did you ever attend any meetings,
 3 any other meetings in Illinois on behalf of
 4 Sleep Alliance?
 5 A. There might have been some, but I, I
 6 can't remember.
 7 Q. Any idea, any reason as to why Sleep
 8 Alliance would conduct its meetings in
 9 Illinois?
 10 A. Ease of getting to. It's one of the
 11 only places that we can fly direct from this
 12 part of the country.
 13 Q. Are you aware of a, a meeting this
 14 coming June 5, two days from now, that Sleep
 15 Alliance is conducting in Illinois?
 16 A. No.
 17 Q. Are you aware of, of any meeting
 18 that Restonic is conducting June 5 in Illinois?
 19 A. Not June 5, no.
 20 Q. Okay. How about any time this
 21 month, are there any upcoming meetings?
 22 A. June 4.
 23 Q. June 4.
 24 Now the meeting on June 4, is that
 25 Restonic or is that Sleep Alliance calling that

June 3, 2008

RICHARD STEVENS

26

1 meeting?

2 A. I do not know if it's a Sleep
3 Alliance meeting, but there is a Restonic
4 meeting.

5 Q. Are you attending that meeting?

6 A. Yes, I am.

7 Q. How often do you attend meetings for
8 Restonic in Illinois?

9 A. Oh, I would say probably maybe once
10 a year, sometimes more, sometimes less. It, it
11 just depends.

12 Q. But at least once a year?

13 A. No, I did not say that, at least
14 once a year. I said sometimes once a year,
15 sometimes less, you know.

16 I don't think, I don't think in 2006
17 I went to any meetings for Restonic in, in
18 Illinois.

19 Q. Was that for any specific reason or
20 is it because they just didn't have one?

21 A. They didn't have one.

22 Q. Is that common not to have one?

23 MR. GAUSTAD: I'm going to object.

24 You're asking him to speculate as to why
25 Restonic may or may not call a meeting, so I'll

27

1 object to the form of the question.

2 Q. (By Ms. Bernheim) Let me rephrase.

3 Does Restonic, aside from 2006, in
4 your experience, as a Restonic sublicensee,
5 does Restonic usually have a meeting yearly in
6 Illinois, in Chicago, in Illinois, wherever it
7 may be?

8 A. Not, not all the time in Illinois,
9 no.

10 Q. They have them other places?

11 A. There could be other places.

12 Q. Where, what other place, for
13 example, where else have they held meetings?

14 A. I'm trying to think here. I think
15 in Indianapolis a few years back. Sometimes
16 they use them in conjunction with trade
17 shows, --

18 Q. Okay.

19 A. -- you know, for -- so that --
20 because everybody has to be at the trade shows,
21 so sometimes, then, they'll have a meeting in
22 conjunction with the trade show. And the trade
23 shows usually are never in Chicago or Illinois.

24 Q. Okay. To the best of your
25 recollection, when did -- and when I say you in

28

1 this question, I'm either referring to you
2 personally as Richard Stevens, or you as either
3 Stevens Mattress Man -- well, as you testified,
4 Stevens Mattress Manufacturing Company, so when
5 did you personally, or through Stevens Mattress
6 Manufacturing Company, first become associated
7 with Restonic?

8 A. I believe it was 19, the end of 18
9 -- the end of 1989 or the year 1990.

10 Q. And you became a sublicensee during
11 that period of time?

12 A. Correct.

13 Q. Okay.

14 MR. GAUSTAD: And I want to make --
15 Miss Bernheim I want to make sure I understand
16 the definition. You've defined you to be both
17 Richard individually and Richard as a --

18 MS. BERNHEIM: I just was about to
19 get into that, to clarify that.

20 MR. GAUSTAD: Okay. Because there's
21 a compound question in there, I believe.

22 MS. BERNHEIM: Okay. Well, let's,
23 let's, let's just establish the foundation
24 here.

25 Q. (By Ms. Bernheim) Who, Mr. Stevens,

29

1 who became the sublicensee, did you sign it
2 personally or was it Stevens Mattress?

3 A. Stevens Mattress.

4 Q. Okay. And Stevens Mattress became a
5 sublicensee sometime in the end of 1989 or
6 early 1990?

7 A. I believe that's the date, yeah.

8 Q. Okay. Now did, was there any
9 negotiation at all in reaching, in coming to
10 terms on a sublicense agreement?

11 A. Explain what you mean by
12 negotiations.

13 Q. Did you, how did it work, did
14 Restonic hand you a sublicense agreement and
15 you signed it, or did you take terms, negotiate
16 terms, or how did it work?

17 A. They had a standard sublicense
18 agreement that we signed and that's what we
19 followed.

20 Q. Okay. Now when you signed that
21 agreement, where were you located, did you sign
22 it in Illinois?

23 A. No. I believe it was in Grand
24 Forks, North Dakota.

25 Q. And how, how did those signatures --

June 3, 2008

RICHARD STEVENS

30

1 how did that happen? Did you fax your
 2 signature back to Illinois, did you mail it?
 3 A. It might have been before faxes
 4 existed.
 5 Q. Okay. Did you mail it?
 6 A. I do not recall.
 7 Q. Okay. I'm going to ask you to look
 8 at what Plaintiff has marked as Exhibit B, and
 9 I'll give you the Bates stamp numbers now.
 10 Okay. That would be Bates stamp
 11 numbers SMND 0001 through Bates numbers SMND
 12 0018.
 13 Mr. Stevens, just let me know when
 14 you have it and you've looked at it.
 15 A. Okay. I have it.
 16 Q. Mr. Stevens, what, can you please
 17 identify for me Plaintiff's Exhibit B?
 18 A. Amended and Restated Sublicense
 19 Agreement.
 20 Q. Okay. Have you seen this document
 21 before?
 22 A. Yes.
 23 Q. Okay. And does this reflect the
 24 most recent sublicense agreement you've
 25 executed with Restonic Mattress Corporation?

31

1 MR. GAUSTAD: And I want to make
 2 sure I understand, when you use the word you,
 3 who are you referring to?
 4 MS. BERNHEIM: I'm sorry.
 5 Q. (By Ms. Bernheim) Stevens Mattress
 6 Manufacturing.
 7 MR. GAUSTAD: Thank you.
 8 A. I believe it is, yeah.
 9 Okay.
 10 Q. (By Ms. Bernheim) Mr. Stevens,
 11 recognizing that this is the most recent
 12 sublicense agreement that Stevens Mattress
 13 signed with Restonic Mattress Corporation --
 14 and this document, for the record, is dated
 15 June 1, 2007, correct?
 16 A. Yes.
 17 Q. Okay. So then you would agree that
 18 you've had an ongoing relationship with
 19 Restonic Mat -- you being Stevens Mattress
 20 Manufacturing Company, have had an ongoing
 21 business relationship with Restonic Mattress
 22 Corporation for at least about, or
 23 approximately 17 years, correct?
 24 A. Yes.
 25 Q. And you understand that, that

32

1 Restonic Mattress Corporation is an Illinois
 2 corporation, correct?
 3 A. Yes.
 4 Q. Okay. Mr. Stevens, besides the
 5 execution of the sublicense agreement between
 6 Restonic Mattress Corporation and Stevens
 7 Mattress, are there any other agreements that
 8 you've entered into with Restonic?
 9 A. I think at one time there was some
 10 national account agreement.
 11 Q. Okay.
 12 A. I'm not sure how current, where --
 13 what the status is on that, though, because
 14 there is, there are no national accounts.
 15 Q. Can you -- can we, can we just stop,
 16 the national accounts program, for a minute,
 17 could you tell me what your understanding of
 18 the national accounts program is?
 19 A. What it is?
 20 Q. Yes.
 21 A. The purpose of it was is that if a
 22 Restonic Corporation had an account that would
 23 cover over several geographical, you know,
 24 parts of the country, you know, then certain
 25 factories in certain areas would be, you know,

33

1 have the opportunity to service that account.
 2 Q. When you say certain factories,
 3 would you say, are you talking about factories
 4 that are located close to the account?
 5 A. No, not necessarily.
 6 Q. So how would something like that be
 7 determined?
 8 A. Their capability, profitability,
 9 ability to do it, capacity. There's several,
 10 several factors involved in that.
 11 Q. Who, what -- who makes the
 12 determinations that the factory has the
 13 capacity or the capability?
 14 A. I could only speak for my own
 15 factory and I would make that determination.
 16 Q. And who would you communicate that
 17 to?
 18 A. Whoever the president of Restonic
 19 would be.
 20 Q. And assuming, just as an example, in
 21 your experience with Stevens Mattress
 22 Manufacturing, if you were approached -- let me
 23 strike that, let's step back.
 24 Did you ever, as part of Stevens
 25 Mattress Manufacturing, ever have the

June 3, 2008

RICHARD STEVENS

34

1 opportunity to serve as a national account?

2 A. Under, under the national account

3 agreement or, --

4 Q. Yes.

5 A. -- or at any time?

6 Q. Well, I mean, let's start with the

7 national account agreement.

8 A. I don't believe under that, under

9 the national account agreement, no.

10 Q. What about at any time?

11 A. Probably in the mid-'90s or so,

12 there was, there was a department -- or Levitz,

13 which was a, you know, a national chain that,

14 that we serviced out of North Dakota.

15 Q. Now was that before there was a

16 national accounts program, to the best of your

17 recollection?

18 A. I think it was.

19 Q. Okay. And when, when Stevens

20 Mattress got the Levitz account, was that the

21 result of you communicating with the Restonic

22 president?

23 A. Right.

24 Q. And so can you just describe how

25 that took place?

35

1 A. Well, they, they asked if we were,

2 you know, first of all, capable of servicing

3 that account and we're able to and --

4 Q. Can I interrupt and ask who they is?

5 Who do you mean by they?

6 A. Restonic, you know, the president of

7 Restonic.

8 Q. So you were contacted to ask if you

9 could service Levitz?

10 A. I don't recall being actually

11 contacted like that there, but it was something

12 to that effect.

13 Q. And did you sign, was there any kind

14 of paperwork that you had to sign in order to

15 service Levitz?

16 A. I don't recall.

17 Q. So you don't recall if Res -- if you

18 did any separate agreement with Restonic

19 regarding Stevens Mattress Manufacturing taking

20 the Levitz account?

21 A. I, I don't recall any paperwork

22 being signed.

23 Q. Okay. Under the national accounts

24 program, as it exists, are you required to pay

25 any money to Restonic under this program?

36

1 You, I'm sorry, from my views here,

2 I'm talking about Stevens Mattress

3 Manufacturing Company. Does Stevens pay any

4 money to Restonic?

5 A. For?

6 Q. To just be a member of the program.

7 A. No.

8 Q. Okay. Do you pay royalties under

9 that program?

10 A. We pay royalties under our

11 sublicense agreement, but not under a national

12 account agreement.

13 Q. Under the national account agreement

14 does Restonic pay any commissions to you?

15 A. No.

16 Q. Do you, does Stevens Mattress

17 Manufacturing purchase any items from Restonic?

18 A. Some point of purchase, things that

19 they -- goes through their office.

20 What I mean by point of purchase

21 would be things like, you know, mattress sale

22 going on today or, you know, window type

23 banner, you know, miscellaneous things like

24 that.

25 Q. Okay. I'm going to ask your

37

1 attorney to please turn to what plaintiffs have

2 marked as Exhibit C. And for reference, those

3 are Bates stamp numbers SMND 0141 through SMND

4 0146.

5 MR. GAUSTAD: You're asking me to do

6 that?

7 MS. BERNHEIM: Well, to show Mr.

8 Stevens, to see it. I don't know who's holding

9 the exhibits over there.

10 MR. GAUSTAD: Okay. Thank you.

11 A. Okay. I have it in front of me.

12 Q. (By Ms. Bernheim) Okay. So, and I'm

13 just going to represent that this is just a

14 selection, we received a stack of invoices, we

15 just took a sampling of them, and I just want

16 to, Mr. Stevens, if you could just identify

17 what these invoices are?

18 A. Okay.

19 Q. On the -- go ahead. Sorry.

20 A. If you look at SMND 0141. Okay?

21 Q. Sure.

22 A. That's a banner, I believe that's, I

23 believe that's what hangs outside of a

24 building.

25 Q. Okay. So these are the types of

RICHARD STEVENS

June 3, 2008

38

1 point of purchase items you're referring to?
 2 A. Yes.
 3 Q. Now if you could look at 0142.
 4 A. Okay.
 5 Q. And that is an invoice that says
 6 it's for November -- well, let me not say that,
 7 11 dash 06, which I'm assuming is November '06,
 8 licensing fees. Is that correct?
 9 A. Uh-huh.
 10 Q. Okay. So these are the types of
 11 invoices that Restonic would send to you. Is
 12 that correct?
 13 A. Uh-huh.
 14 Q. Now if we look back really fast on
 15 0141, --
 16 A. Okay.
 17 Q. -- that invoice indicates that it
 18 was sold to Restonic Grand Forks, North
 19 Dakota. That is Stevens Mattress. Is that
 20 correct?
 21 A. Right.
 22 Q. And it was shipped to a Ralph Rezac
 23 in Eden Prairie, Minnesota?
 24 A. Yes.
 25 Q. Do you know who that is?

39

1 A. He works for me.
 2 Q. Okay. And he works for you in
 3 Minnesota?
 4 A. Yes.
 5 Q. Okay. And do you have manufacturing
 6 facilities in Minnesota, or what does he do
 7 exactly?
 8 A. He's a sales representative that's
 9 based out of Minneapolis. Eden Prairie is a
 10 suburb of Minneapolis.
 11 Q. What areas, what --
 12 A. We have no areas, we have no areas
 13 at all.
 14 Q. So there's no particular area that
 15 you focus your sales in?
 16 A. We have no areas. We sell anyplace,
 17 you know.
 18 Q. So are you free to sell anywhere in
 19 the country?
 20 A. Yes.
 21 Q. Do you sell in Illinois?
 22 A. We can sell anyplace in the U.S.,
 23 yes.
 24 Q. But do you, do you actively sell in
 25 the state of Illinois?

40

1 A. No, we do not.
 2 Q. Have you ever sold in the state of
 3 Illinois?
 4 A. Not to the best of my knowledge.
 5 Q. Okay. Now pursuant to the
 6 sublicense agreement, which we've already
 7 identified, you pay royalties, correct?
 8 A. Yes.
 9 Q. Okay. And, and where, how do you
 10 pay those royalty payments?
 11 A. By check.
 12 Q. Okay. And where do you send the
 13 checks?
 14 A. To Restonic corporate office.
 15 Q. And that's located in Illinois?
 16 A. That's correct.
 17 Q. And how often do you pay royalties?
 18 A. I believe it's once a month.
 19 Q. I'm sorry, was that once a month?
 20 A. I believe that's right.
 21 Q. So once a month you send a check to
 22 Restonic in Illinois?
 23 A. Correct.
 24 Q. And when you joined, when Stevens
 25 Mattress first became a licensee in 1990, or

41

1 early 1990, were you paying royalties?
 2 A. Yes.
 3 Q. And how did you pay the royalties
 4 back then?
 5 A. I believe it was to Restonic.
 6 Q. By check?
 7 A. By check, yes.
 8 Q. That you mailed to Illinois?
 9 A. Right.
 10 Q. So for at least the last 17 years
 11 you've been sending checks to Restonic in
 12 Illinois on a monthly basis. Is that correct?
 13 A. Yes.
 14 Q. Now you stated a minute ago that you
 15 can sell anywhere in the country, Stevens
 16 Mattress Manufacturing can sell products
 17 anywhere in the country including the state of
 18 Illinois, correct?
 19 A. Um-hum.
 20 Q. Now do you have, does Stevens
 21 Mattress have any contracts with any Illinois
 22 residents for the sale of mattresses?
 23 A. No.
 24 Q. Do you have any contracts -- I'm
 25 sorry, for the purpose of this depo I'm talking

June 3, 2008

RICHARD STEVENS

42

1 about Stevens Mattress, unless I specifically
2 refer to you individually, Mr. Stevens, so
3 we'll avoid the issue of who the you is.

4 Does Stevens Mattress have any
5 contracts with any Illinois residents for the
6 sale of any other product?

7 A. No.

8 Q. Now, Mr. Stevens, personally, have
9 you ever traveled to the state of Illinois to
10 sign a contract?

11 A. No.

12 Q. Okay. Mr. Stevens, have you ever,
13 on behalf of yourself personally, or on behalf
14 Stevens Mattress Manufacturing, attended any
15 meetings in Illinois?

16 MR. GAUSTAD: Well, I'm going to
17 object, because -- to the form of the question,
18 because you've got two, I mean, you just
19 defined what you was. I mean, I think it might
20 be easier, for clarity for Mr. Stevens, to
21 understand who you're referring to.

22 MS. BERNHEIM: Point taken. I'll
23 break it into two.

24 MR. GAUSTAD: Thank you.

25 Q. (By Ms. Bernheim) Mr. Stevens, have

43

1 you personally ever attended any meetings in
2 the state of Illinois?

3 MR. GAUSTAD: Are you --

4 A. I really don't, I don't even know
5 how to answer that.

6 Q. (By Ms. Bernheim) Well, I
7 respectfully -- I believe a yes or no would
8 probably be a start.

9 MR. GAUSTAD: I'm going to object to
10 the form of the question. One, it -- are you
11 referring, as I understand it, you're referring
12 to him personally?

13 MS. BERNHEIM: I'm referring to him
14 personally as ever attending a meeting.

15 MR. GAUSTAD: Then are you
16 referring -- then I'm going to object to the
17 form of the question, because a meeting, I
18 mean, are you talking social meeting, business
19 meetings, what are you referring to?

20 Q. (By Ms. Bernheim) Ever attended a
21 meeting with a member of, first, let's start
22 with a member of Restonic in the state of
23 Illinois, meaning an officer, a director,
24 another licensee?

25 A. I don't, I do not recall doing that.

44

1 Personally I --

2 Q. So you don't recall ever having
3 attended a meeting for Restonic in the state of
4 Illinois?

5 A. Personally.

6 Q. Have you attended a meeting in the
7 state of Illinois on behalf, representing
8 Stevens Mattress Manufacturing with -- I'm
9 sorry, that's an awkward question.

10 Have you attended an official
11 Restonic meeting, be it with other licensees,
12 with members of the board, presidents,
13 etcetera, as a representative of Stevens
14 Mattress, in the state of Illinois?

15 A. Well, yes.

16 Q. When is the, do you recall when you
17 attended these meetings, this meeting or
18 meetings?

19 A. I, I don't recall the dates.

20 Q. Do you recall the most recent one
21 you attended?

22 A. I, I can't remember them. I really
23 can't recall the dates of that.

24 Q. Have you attended a meeting in the
25 last five years?

45

1 A. I can't recall the dates of it.

2 Q. Can you recall, a ballpark, how many
3 times you may have attended a meeting, not the
4 dates, just how many times?

5 A. I real -- I really can't recall
6 that.

7 Q. Have you ever, has Stevens Mattress
8 Manufacturing ever sent any of its employees to
9 a Restonic meeting in Illinois?

10 A. Yes.

11 Q. How often?

12 A. There's a gentleman that works for
13 me that is on the marketing committee, which
14 goes -- I don't, I don't know how many times he
15 goes there, but, you know, it's probably, you
16 know, you know, maybe once or twice a year.
17 I'm not totally positive there how many times
18 he goes.

19 Q. What is that gentleman's name?

20 A. Ken Akers.

21 Q. A-k-e-r-s?

22 A. Right.

23 Q. And, and where does Mr. Akers
24 reside?

25 A. In Ankeny, Iowa.

June 3, 2008

RICHARD STEVENS

46

1 Q. And what is his job title?
2 A. Sales manager.
3 Q. Sales manager.
4 Do you have any sales managers
5 located in the state of Illinois?
6 A. No.
7 Q. Mr. Stevens, have you personally
8 ever attended a product development meeting for
9 Restonic in Illinois?
10 A. Explain what you mean by product
11 development committee or meeting?
12 Q. A meeting, a meeting where there's a
13 discussion with members of Restonic about
14 different products that the company's going to
15 offer.
16 A. I've been to meetings with, with
17 flammability issues, but I don't recall of
18 specific products.
19 Q. And when you went to the
20 flammability issue meeting, were you
21 representing Stevens Mattress?
22 A. Yes.
23 Q. Do you recall when you attended the
24 flammability issues meeting?
25 A. There was some in 2006 and last year

47

1 in, last year in, probably, it was either, oh,
2 May, probably sometime in May.
3 Q. Of '07?
4 A. Of '07, yes.
5 Q. And you said there was some in 2006.
6 What, were there more than one?
7 A. I, I think there was only one.
8 Q. Okay. And do you recall what month
9 in '06 or --
10 A. I think it was in, in the autumn
11 sometime.
12 Q. Okay. Have you ever attended on
13 behalf, as a representative of Stevens
14 Mattress, a design committee meeting in
15 Illinois for Restonic?
16 A. I don't understand what you mean by
17 design.
18 Q. A meeting where the discussion was
19 along the lines of the design of a product or,
20 or the direction the -- Restonic was going to
21 take, any kind of corporate decisions along
22 those lines?
23 A. I would have attended meetings with
24 the development of a product, but not, not, you
25 know, of, of determining like the different

48

1 components we'd use in a flammability issue.
2 Q. Right.
3 Would, would the development of a
4 product meeting be a different meeting than the
5 flammability issue?
6 A. They're two different things, I
7 believe.
8 Q. So you said --
9 A. I'm really not sure, I'm not sure --
10 you're really stating specifically, you know,
11 you're, I think you're kind of crossing lines.
12 If you're looking, what I'm talking
13 about is, actually, we're saying that you use
14 this, you know, this type of material would be
15 the best and the most cost effective to use in
16 a mattress to prevent it from burning and, and
17 I think you're asking is, is it, this the
18 package that we sell to the public.
19 And I, I don't do anything with that
20 package to the public deal.
21 Q. So when you say that you would have,
22 you said a few minutes ago you would have
23 attended a product development meeting, does
24 that mean -- what do you mean by that? You're
25 talking about what you just spoke of with the

49

1 flammability issue or is that --
2 MR. GAUSTAD: And I'm going to
3 object to the form of the question, because
4 this line of questioning, I believe, dealt with
5 these meetings that occurred in Illinois. Is
6 that the -- and so I'm going to object to the
7 form of the question as to whether now you're
8 expanding this to include meeting --
9 MS. BERNHEIM: We're not, we're not
10 expanding it. I'm just -- you know, the client
11 has testified he didn't attend a product
12 development meeting, then he said he did. I'm
13 trying to find out what meetings he's attended
14 in Illinois.
15 MR. GAUSTAD: Okay.
16 Q. (By Ms. Bernheim) So --
17 A. The meetings, the meetings I
18 attended, attend, that I'm part of, are how to
19 develop the product so that it meets the
20 federal flammability issues.
21 And that could be -- you could, I
22 mean, that's what, that's what -- you can call
23 it a product, you can call it, you know,
24 several different names. I don't know what you
25 want to classify it as, but the meetings that I

June 3, 2008

RICHARD STEVENS

50

1 would have attended would have been
2 specifically for the different flammability
3 issues.

4 And then I attended, you know, a
5 part of that, too, was attending the, the
6 actual, at the Underwriters Laboratory of
7 watching the mattresses being tested to see if
8 they passed the --

9 Q. Where, where was that laboratory?

10 A. It's in, in Chicago. It's UL
11 laboratories. Underwriters Laboratory.

12 Q. And when did you do that, when did
13 you attend that laboratory?

14 A. Probably last May.

15 Q. How many times did you go there?

16 A. It was for two days, two days, I
17 think it was.

18 Q. So you went one time for two days?

19 A. Right.

20 Q. So let me just get to the --

21 A. No, let me take that back. There
22 might have been other times earlier, earlier
23 on, but -- (no further response.)

24 Q. So let's just, let's just discuss a
25 little bit further. Did you, as a

51

1 representative of Stevens Mattress
2 Manufacturing Company, ever attend a licensing
3 meeting? And by that I mean a meeting where
4 all the licensees get together in Illinois to
5 discuss the company or to take care of
6 corporate business affairs?

7 A. Have I ever attended one of those
8 meetings?

9 Q. Yes.

10 A. Yes, I have.

11 Q. Okay. Do you recall how many of
12 those meetings you attended?

13 A. No.

14 Q. More than five?

15 A. I just said I don't recall.

16 Q. Do you recall the last time you
17 attended one of those meetings?

18 A. No, I do not specifically.

19 Q. Have you ever attended any of the
20 Sleep Alliance meetings on behalf of -- well,
21 strike that.

22 Have you ever attended any of the
23 Sleep Alliance meetings on behalf of Upper
24 Midwest Sleep, LLC?

25 A. In the state of Illinois?

52

1 Q. Yes, in the state of Illinois.

2 A. I, I don't think so.

3 Q. Has Sleep Alliance ever held any
4 meetings in the state of Illinois?

5 MR. GAUSTAD: I'm going to object.

6 I think it's been asked and answered, but --

7 Q. (By Ms. Bernheim) You can still
8 answer.

9 MR. GAUSTAD: Yeah.

10 MS. BERNHEIM: And I apologize if
11 it's been asked.

12 MR. GAUSTAD: No, I understand.

13 A. I don't believe there has been.

14 Now remember, I'm not a member of
15 Sleep Alliance for the last six months, so --
16 (no further response.)

17 Q. (By Ms. Bernheim) All right. So
18 obviously I limit that question to up until the
19 time that you were no longer involved.

20 Okay. Did you ever receive, on
21 behalf of Stevens Mattress, any training in the
22 state of Illinois as an RMC licensee?

23 A. What do you mean by training?

24 Q. Training on products, training on
25 manufacturing, flammability training.

53

1 A. Yes, I'm sure.

2 Q. You recall how often you received
3 that training?

4 A. No.

5 Q. Do you recall the last time you
6 would have gone to Illinois to receive
7 training?

8 A. I, I don't recall.

9 Q. Have you ever sent, has Stevens
10 Mattress ever sent any of its employees to
11 attend training with Restonic in Illinois?

12 A. I'm sure I have.

13 Q. I'm going to ask you, Mr. Stevens,
14 to please look at what plaintiffs have marked
15 as Exhibit D.

16 MS. BERNHEIM: I'm just going to
17 ask, it looks like -- do you all have Bates
18 document, Bates stamp number SMND 0362, did I
19 send that? Because I know I marked, I marked D
20 starting on SMND 0363, but I meant to do that
21 on two, so I'm wondering if you have it?

22 MR. GAUSTAD: It wasn't, it wasn't
23 e-mailed to us.

24 MS. BERNHEIM: So you start at 0363?

25 MR. GAUSTAD: Your Exhibit D that

June 3, 2008

RICHARD STEVENS

54

1 was e-mailed to me, that I have, starts at SMND
2 0363.

3 MS. BERNHEIM: Can I ask you just to
4 look at the last page of Exhibit C and see what
5 that is? Is that, by chance, the VISA account
6 summary?

7 MR. GAUSTAD: The last Exhibit C
8 that, that you e-mailed to me is SMND 0146.

9 MS. BERNHEIM: Okay. Then that's my
10 mistake.

11 Q. (By Ms. Bernheim) Okay. So let's
12 just look at 0363.

13 Mr. Stevens, I am looking at, and
14 correct me if I'm wrong, a business card
15 statement for a Chase VISA, the date of the
16 account, of the invoice is 10 -- or the
17 statement is 10-29-07 to 11-28-07. Is that
18 correct?

19 A. Yeah.

20 Q. Okay. And I'm looking at the top,
21 is this for a Ken Lakes?

22 A. Akers.

23 Q. Akers, okay.

24 So that's the same Akers, Mr. Akers
25 we were talking about before?

56

1 best of your knowledge, does Mr. Akers go to
2 Illinois?

3 A. I would have to look that up.

4 Q. To the best of your knowledge --

5 Okay. If you were going to look
6 that up, what, what would you consult to find
7 out that information?

8 A. Well, I would talk to him.

9 Q. Are you aware whether -- if Mr.
10 Akers was going to travel to Illinois, would he
11 tell you first, normally?

12 A. No.

13 Q. And are you aware of Mr. Akers
14 having traveled to Illinois in the past?

15 A. Yes.

16 Q. And do you recall what he traveled
17 to Illinois for?

18 A. He's, he would be on the, he's on
19 some of the marketing arms of the Restonic.

20 Q. Would he be going for, he has gone
21 for marketing meetings?

22 A. Uh-huh.

23 Q. If you would please turn to page
24 Bates stamp number SMND 0365, that's still a
25 part of Exhibit D.

55

1 A. Yes.

2 Q. Okay. So on 11 -- if you look down
3 towards the bottom, on November 17 there's a
4 charge, Doubletree Hotel O'Hare, Rosemont,
5 Illinois. Do you see that?

6 A. Um-hum.

7 Q. Now do you recall what that was for,
8 besides a hotel in Chicago? Is that Mr. Akers
9 going to Chicago?

10 A. Yes.

11 Q. Okay. And what would be the purpose
12 of that?

13 MR. GAUSTAD: If, if he knows. I
14 mean, I object --

15 A. I don't know what it, --

16 Q. (By Ms. Bernheim) If you know.

17 A. -- what specifically it would be
18 for, no.

19 Q. Can you give me a reason why Mr.
20 Akers would be traveling to Chicago?

21 MR. GAUSTAD: Well, I'm going to
22 object to the form of the question, because
23 you're asking him to speculate.

24 MS. BERNHEIM: Okay. Strike that.

25 Q. (By Ms. Bernheim) How often, to the

57

1 A. Okay.

2 Q. And I'm looking at an e-mail dated
3 May 7, 2008 -- I'm sorry, yes, which has a
4 forwarded message attached to it dated
5 February 11, 2008. Do you see that?

6 A. Yes.

7 Q. And if we look over at the next
8 page, which is Bates stamp SMND 0366, indicates
9 a flight reservation for you, Mr. Stevens,
10 traveling to Chicago O'Hare on February 12,
11 2008. Do you see that?

12 A. Um-hum.

13 Q. Do you recall -- well, first of all,
14 did you, did you travel to Chicago on February
15 12, 2008?

16 A. Yes.

17 Q. Okay. And do you recall why you
18 went to Chicago on February 12, 2008?

19 A. The purpose of the meeting was to
20 meet with Stylution.

21 Q. Stylution.

22 And what is Stylution?

23 A. It's a, it's a mattress company that
24 imports and sells from China and we do some
25 work for them.

June 3, 2008

RICHARD STEVENS

58

1 Q. Who's we?
 2 A. My -- Stevens Mattress.
 3 Q. And who attended that meeting?
 4 A. Myself and Ken Akers and Ed Scott.
 5 Q. Who is Ed Scott?
 6 A. Stylution.
 7 Q. He works for Stylution?
 8 A. Right.
 9 Q. Okay. What kind of work does
 10 Stevens Mattress do for Stylution?
 11 A. They would, they would sell people
 12 contain -- you know, containers of mattresses
 13 and they would ask us to make box springs for
 14 them.
 15 Q. Now is that something that, did you
 16 work in, in conglomeration with Sleep Alliance
 17 or is that just Stevens Mattress that did that?
 18 A. That's Stevens Mattress.
 19 Q. Now when you made the, when Stevens
 20 Mattress produced the box springs, would those
 21 be shipped to Illinois?
 22 A. No.
 23 Q. Where would they go?
 24 A. I believe there was orders to, one
 25 order to Kansas and maybe like three to four

59

1 orders in Minnesota.
 2 Q. So you were contracting with an
 3 Illinois company, Stylution, and then having it
 4 shipped somewhere else. Is that correct?
 5 MR. GAUSTAD: I'm going to object to
 6 the foundation. I don't know that there's been
 7 any foundation as to where Stylution exists.
 8 Q. (By Ms. Bernheim) Okay. Can I, I'm
 9 going to go a little bit out of turn, can I
 10 have you please, Mr. Stevens, look at Exhibit
 11 I, and that's Bates stamped SMND 0491 through
 12 SMND 0494.
 13 MR. GAUSTAD: You said 0491 through?
 14 MS. BERNHEIM: 494.
 15 Q. (By Ms. Bernheim) And correct me if
 16 I'm wrong, Mr. Stevens, but I'm looking at what
 17 appears to be an invoice from Upper Midwest
 18 Sleep, LLC, to Stylution USA. Is that correct?
 19 A. Yes.
 20 Q. Now just for clarification purposes,
 21 you testified just a few minutes ago that it
 22 was Stevens Mattress that conducted business
 23 with Stylution, yet, according to this invoice,
 24 it appears it's Upper Midwest Sleep, LLC.
 25 So can you clarify that for me,

60

1 please? Why would Upper Midwest Sleep, LLC's
 2 name be on the invoice if it was Stevens
 3 Mattress?
 4 A. I would have to think that through.
 5 Q. Is there anything that you have to
 6 consult to help you refresh your recollection
 7 on that?
 8 A. Well, that's the name of, that's the
 9 name of the company that, you know, Upper
 10 Midwest Sleep is the name of the company that,
 11 you know, Steven -- I really don't have an
 12 explanation for it.
 13 Q. Okay. Now underneath the section of
 14 the invoice where it says Sold To, it says
 15 Stylution USA, 1142 Rose Road, Lake Zurich,
 16 Illinois, 60047. Is that correct?
 17 A. Yeah.
 18 Q. Now is it your understanding that
 19 Stylution USA is located in Illinois?
 20 A. Yes.
 21 Q. Okay. Now when you testified just a
 22 few minutes ago that you conducted business
 23 with Stylution in that they brought mattresses
 24 over and Stevens Mattress made box springs for
 25 those mattresses. Is that correct?

61

1 A. Um-hum.
 2 Q. So did you enter into a contract for
 3 the manufacturing of the box springs, did
 4 Stevens Mattress enter into a contract for the
 5 manufacture of the box springs with Stylution
 6 USA?
 7 A. Not a contract, no.
 8 Q. What, what kind of an agreement did
 9 you have?
 10 A. They asked if we would do the, do
 11 the work and ship them to these places in
 12 Minnesota and, around there, and we agreed to
 13 do it.
 14 Q. You had no written agreement --
 15 A. No.
 16 Q. -- with Stylution USA?
 17 A. No.
 18 Q. Are there any e-mails between you
 19 and Stylution USA that discuss the terms of
 20 this agreement?
 21 A. Not that I'm aware of. There
 22 probably is someplace. I'm not aware of any,
 23 though.
 24 Q. So, in other words, whatever
 25 agreement you had would just be reflected by

June 3, 2008

RICHARD STEVENS

62

1 the invoices you provided to us?

2 A. I'm sure we had, we had someplace
3 along the line of a, of a price and all that
4 there, you know, and -- but I don't recall
5 where any of it is.

6 Q. I'm going to ask you, please, now to
7 look at Exhibit E, which plaintiffs have marked
8 as Bates stamp number SMND 0061.

9 A. Okay.

10 Q. Mr. Stevens, do you have that?

11 A. Yes.

12 Q. Okay. And it looks to me that this
13 is a Letter of Intent dated April 28, 2008,
14 between, I apologize if I mispronounce, Evenson
15 or Evenson Peterson Consulting --

16 A. Okay.

17 Q. -- and Upper Midwest Sleep.

18 And according to this Letter of
19 Intent, the Description of Services is, is that
20 the consultant will provide client with
21 engineered labor standards that reflect the
22 actual time required to produce a mattress or
23 foundation unit.

24 Mr. Stevens, can you explain a
25 little bit about the purpose of this Letter of

64

1 her in Baltimore, at the trade show, back in
2 March.

3 Q. And did you negotiate any terms in
4 this Letter of Intent?

5 A. You know, what she would charge us
6 to, to do the work, yes.

7 Q. Did you do that by telephone?

8 A. I believe she did, yeah. I did not
9 do the negotiation personally myself, no.

10 Q. Who did the negotiation?

11 A. Pardon?

12 Q. I'm sorry. Who did the negotiation?

13 A. One of the ladies that works for me.

14 Q. And by telephone. And Miss Evenson
15 was located in Illinois at the time?

16 A. Right.

17 Q. And Miss Evenson generated this
18 Letter of Intent from her to you?

19 A. To our office, yes.

20 Q. How did you receive it, by mail?

21 A. I don't know how we received it.

22 Q. I'm going to ask you to please turn
23 to what plaintiffs have marked as Exhibit F,
24 and that is Bates stamp number SMND 0063
25 through SMND 0067.

63

1 Intent?

2 A. What, what the purpose of this is
3 that we're trying to upgrade our software
4 system and this lady is an industrial engineer,
5 which can help specifically get our time, or
6 cost of direct labor and indirect labor in the
7 products.

8 Q. And is it, is it Evenson or Evenson?

9 A. Evenson.

10 Q. And so, and Evenson Peterson
11 Consulting, according to this Letter of Intent,
12 is located in Illinois, correct?

13 A. Correct.

14 Q. And how did it come to be that you
15 began a relationship or were put in touch with
16 Evenson Peterson Consulting?

17 A. She used to be, work with Restonic
18 as an industrial engineer, and then she was an
19 interim president for Restonic.

20 Q. Now did you approach Miss Evenson
21 about hiring her as a consultant?

22 A. It was through the software people
23 that we, that we use and, and she does some
24 work for them and, you know, through those
25 people. And that was in, I believe I talked to

65

1 Do you have those in front of you?

2 A. Yes, I do.

3 Q. Okay. And I'm just going to
4 represent that what you're looking at is a set
5 of invoices from SFG, which is Service Forms
6 and Graphics, Inc. Is that correct?

7 A. Yes.

8 Q. And, Mr. Stevens, is it your
9 understanding that SFG is located in Darien,
10 Illinois?

11 A. That's what it says here, yes.

12 Q. And what does SFG, what services --
13 and let me just, for the record, it reflects
14 on, this is an invoice directed to Barb
15 Litzinger at Upper Midwest Sleep, LLC. Is that
16 correct?

17 A. Um-hum.

18 Q. What services, Mr. Stevens, does SFG
19 provide to Upper Midwest Sleep, LLC?

20 A. Well, it must be checks.

21 Q. Checks.

22 Now does SFG also provide checks to
23 Stevens Mattress Manufacturing?

24 A. I'm not sure they do.

25 Q. Are you aware of any other entity

June 3, 2008

RICHARD STEVENS

66

1 that may provide checks to Stevens Mattress
 2 Manufacturing?
 3 A. Probably just our local bank.
 4 Q. Do you recall how long Upper Midwest
 5 Sleep has been receiving checks from SFG?
 6 A. I, I do not know.
 7 Q. I'm going to ask you now, please, to
 8 turn to what plaintiffs have marked as Exhibit
 9 G, and those are documents Bates stamp numbers
 10 SMND 0068 through SMND 0071.
 11 A. Okay. I have those.
 12 Q. And there's an invoice from A. Lava
 13 & Son Company, located at 4800 South Kilbourn
 14 Avenue in Chicago, Illinois, and it's sent to,
 15 it indicates sold to Upper Midwest Sleep
 16 Alliance -- I'm sorry, Upper Midwest Sleep,
 17 LLC, Restonic, and shipped to Restonic. Is
 18 that correct?
 19 A. Yeah.
 20 Q. What services does -- strike that.
 21 Is it your understanding, Mr.
 22 Stevens, A. Lava & Son Company --
 23 A. Could you repeat that? You were
 24 cutting out.
 25 Q. Sorry.

67

1 Is it your understanding, Mr.
 2 Stevens, that A. Lava & Son Company is located
 3 in Chicago, Illinois?
 4 A. Yes.
 5 Q. Okay. And what services does A.
 6 Lava & Son Company provide to Upper Midwest
 7 Sleep, LLC and/or Restonic, located in Grand
 8 Forks, North Dakota?
 9 A. They supply us with, you know, with
 10 foam, some types of foam, you know, time to
 11 time we buy thread from them.
 12 Q. What was the last thing, from time
 13 to time you buy what from them?
 14 A. Thread.
 15 Q. Thread, okay.
 16 A. You know, different components.
 17 They specialize in certain types of components
 18 that are, you know, like not easy for us to
 19 get, but they have them and, you know, that's
 20 why we buy from them from time -- you know,
 21 different items.
 22 Q. Do you recall how long you've been
 23 buying from A. Lava & Son Company?
 24 A. Oh, I'm sure that our -- you know,
 25 all of my life. You know, you know, as far as,

68

1 as long as I can ever remember, we've bought,
 2 we've done business with these people 30,
 3 40 years.
 4 Q. 40 years?
 5 A. 30 to 40 years.
 6 Q. So prior to becoming a sublicensee
 7 of Restonic, Stevens Mattress was in the
 8 bedding industry?
 9 A. Correct.
 10 Q. I'd ask you, please, to turn to what
 11 plaintiffs have marked as Exhibit H, which
 12 is --
 13 MR. GAUSTAD: Miss Bernheim, we've
 14 been going for a little over an hour, just
 15 about an hour and a half, and I may need to
 16 have a break here, just because I've had a cup
 17 of water. Would it be -- could I indulge you
 18 to take just five minutes?
 19 MS. BERNHEIM: Absolutely.
 20 MR. GAUSTAD: Thank you.
 21 MS. BERNHEIM: We'll reconvene in --
 22 what time do you have?
 23 MR. GAUSTAD: I've got -- we'll just
 24 keep the phone on.
 25 MS. BERNHEIM: I'll just come back

69

1 in five minutes by my watch time and hopefully
 2 you guys will be back. And we'll wait.
 3 MR. GAUSTAD: Thank you.
 4 (Whereupon, a brief recess was
 5 taken.)
 6 MR. GAUSTAD: We're back.
 7 Q. (By Ms. Bernheim) I think I left
 8 off, I asked you if you could please look at
 9 what plaintiffs have marked as Exhibit H.
 10 A. Okay.
 11 Q. And that is documents Bates stamped
 12 SMND 0139 through SMND -- the last one doesn't
 13 have a Bates stamp number.
 14 MR. GAUSTAD: I believe it does,
 15 just right above the --
 16 MS. BERNHEIM: Did I miss it? I
 17 don't see it.
 18 MR. GAUSTAD: I'm looking for it,
 19 too, here.
 20 Is that the document that at the
 21 bottom right-hand corner it says, Received 5-9,
 22 2006, and is --
 23 MS. BERNHEIM: That would be the
 24 last one I was looking at, that I have, that's
 25 why I could identify it as Exhibit H. It seems

June 3, 2008

RICHARD STEVENS

70

1 that, for whatever reason, it didn't get a
2 Bates stamp number on.
3 MR. GAUSTAD: Yeah. And mine
4 doesn't really have a Bates number either.
5 MS. BERNHEIM: Well, we don't really
6 need that specific page anyway, so . . .
7 Q. (By Ms. Bernheim) And for the
8 record, Mr. Stevens, again, please correct me
9 if I'm wrong or if you're looking at something
10 different, I'm looking at what appears to be an
11 invoice from B & C International located at
12 6624 Weather Hill Drive, Willowbrook, Illinois,
13 60527, and this is directed to customer Stevens
14 Mattress Manufacturing, Inc. Is that correct?
15 A. Yeah.
16 Q. Okay. So is it your understanding,
17 Mr. Stevens, that B & C International is in
18 fact located in Willowbrook, Illinois?
19 A. Yes.
20 Q. Okay. And what services does, or
21 did B & C International provide to Stevens
22 Mattress Manufacturing?
23 A. What Ben does is that he is, he
24 lines up product in China that we import.
25 Q. Okay. So we meaning Stevens

71

1 Mattress Manufacturing imports product from
2 China?
3 A. Right.
4 Q. And B & C International is, for all
5 intents and purposes, like the identifier, the
6 bill man type --
7 A. Could you repeat that again, please?
8 Q. Okay. Is, is -- I'm trying to
9 understand exactly what B & C International's
10 purpose is.
11 Do they act as your agent, as
12 Stevens Mattress Manufacturing's agent in
13 China?
14 A. No. He's an independent and we buy
15 it from him.
16 Q. Okay. So he locates products in
17 China and you buy through, and Stevens buys
18 through him?
19 A. Right.
20 Q. And how long has B & C International
21 been providing Stevens with product from China?
22 A. Probably, I'm just trying to think
23 here, probably two years.
24 Q. Two years.
25 And has B & C, in that two-year

72

1 period of time, always been located in
2 Illinois?
3 A. I believe he has.
4 Q. And how did you come to have a
5 relationship with, how did Stevens come to have
6 a relationship with B & C International?
7 A. Just through, through trade shows.
8 I don't recall how it was, but it's through
9 trade shows somehow I got to know him.
10 Q. Do you have any type of agreement or
11 contract with B & C International for the --
12 that governs your relationship with them?
13 A. No.
14 Q. So for all intents and purposes, the
15 terms of these invoices govern the relationship
16 that you have with them?
17 A. Yes. Just invoice to invoice. We
18 don't, you know, it's just periodically when we
19 buy from them, too.
20 Q. And when you, when you need product,
21 do you contact them?
22 A. Yes.
23 Q. And how do you do that, do you by
24 telephone or --
25 A. I'm sure that's how we do it.

73

1 Q. Have you ever had a, do you, either
2 you personally as Richard -- well, have you
3 personally ever had a meeting with B & C
4 International in Chicago? And by you I mean
5 Richard Stevens.
6 A. No.
7 Q. And have any of the employees of
8 Stevens Mattress Manufacturing ever met with
9 anyone from B & C International in Illinois?
10 A. No, I don't believe so. I'm almost
11 positive no.
12 Q. Okay. Now previously we had a
13 conversation about flammability program. Is
14 that the right way to describe, the Restonic
15 flammability program, is that the right way to
16 describe that?
17 A. Yeah, I guess that's as -- yeah.
18 Q. Okay. Can I ask you to look at what
19 plaintiffs have marked as Exhibit J.
20 A. Okay.
21 Q. And that, for the record, is
22 document Bates stamp number SMND 0062.
23 And also, for the record, what I'm
24 looking at -- and, Mr. Stevens, if you're
25 looking at something different, please let me

June 3, 2008

RICHARD STEVENS

74

1 know -- a Restonic Executive Bulletin dated
2 July 12, 2006, to all U.S. licensees, carbon
3 copied to the manufacturing committee from
4 Carlene Evenson, for Evenson Peterson,
5 regarding the flammability program. Is that
6 correct?

7 A. Um-hum.

8 Q. Okay. Mr. Stevens, what is your
9 understanding of the Restonic flammability
10 program?

11 A. What -- you know, well, first of
12 all, the flammability program is a federal
13 mandated, not, not Restonic.

14 Q. Okay.

15 A. So that's, that's the first thing of
16 it.

17 And so, I mean -- okay.

18 Q. Now looking back at Exhibit J, the
19 Executive Bulletin, in the end of the first
20 line into the second, indicates that, that RMC
21 has entered into an agreement with Lilly
22 Management Group. What, what is, who is, what
23 is your understanding of who Lilly Management
24 Group is?

25 A. Lilly Management Group is a group of

75

1 individuals that would take and go to different
2 vendors and test their product and then they
3 would say, okay, this, this certain number --
4 combination of products should work for your
5 flammability thing.

6 And they would do, you know, instead
7 of every Restonic and every -- you know,
8 they're way beyond just Restonic, they
9 represent anybody in the United States that
10 wants to be a flam -- you know, work in their
11 flammability program.

12 And they would test certain
13 products, prototype it, you know, burn them at
14 different laboratories and say, okay, this,
15 this works.

16 And then you could purchase that,
17 that information from Lilly Management Group
18 and then test your own product against that to
19 see if you pass.

20 Q. Okay. Now further on, according to
21 this, this bulletin, it says that, It will be
22 required that all Restonic licensees
23 participate in this program; and that there's
24 costs associated with participating in the
25 program, correct?

76

1 A. Yes.

2 Q. Okay. Now this agreement with Lilly
3 Management Group, did Stevens Mattress have
4 their own individual agreement with them or was
5 it a corporate agreement between Restonic and
6 Lilly?

7 A. I'm not, I'm not sure of what, how
8 that actually worked out there.

9 Q. Well, let me ask it this way. Does
10 Stevens Mattress Manufacturing have an
11 agreement with Lilly Management Group?

12 A. I, I do not recall if we have,
13 specifically have an agreement with Lilly or if
14 it's all part of, through Restonic Mattress
15 Company.

16 Q. Did Stevens Mattress Manufacturing
17 have any involvement in the negotiation of the
18 agreement with Lilly Management?

19 A. No, we did not.

20 Q. Did you participate in the program
21 as is referenced in this Executive Bulletin?

22 A. Did we purchase the program?

23 Q. Well, I used the word participate.
24 If participate means purchase, then I'm not
25 sure what you had to do to participate.

77

1 A. Yeah. We, we participated in this
2 program, yes.

3 Q. Okay. So you made that payment?

4 A. Yes.

5 Q. Okay. How did Stevens Mattress pay
6 Lilly Management Group?

7 A. By check. I don't know how we did
8 it, I mean, who the check was made out to and
9 all that, I do not know.

10 Q. So do you know where you, do you
11 know where Stevens Mattress would have sent the
12 check?

13 A. No, I do not.

14 Q. Now you spoke previously, when you
15 testified, you said that you went to
16 Underwriter Laboratories last May --

17 A. Uh-huh.

18 Q. -- to observe flammability testing.
19 Is that correct?

20 A. That's correct.

21 Q. Now when you did that, was that on
22 behalf of Stevens Mattress Manufacturing?

23 A. Yes.

24 Q. Okay. So that was not on behalf of
25 Restonic?

June 3, 2008

RICHARD STEVENS

78

1 A. No.
 2 Q. Have you ever conducted any
 3 flammability testing or participated in any
 4 flammability testing on behalf of Restonic?
 5 A. Yes.
 6 Q. When was that?
 7 A. Prob -- you know, probably some --
 8 you know, I don't remember the dates offhand,
 9 but it was, let's see, 2005 or something like
 10 that.
 11 It might have even --
 12 Q. How -- I'm sorry.
 13 A. It might have, even have started in
 14 2004, because the government started it and
 15 then they held -- then they put a moratorium on
 16 it for a year or so, and so, you know, I
 17 forget, I kind of forget the chain of events
 18 there.
 19 Q. Now how did it come to be, to the
 20 best of your recollection, that you
 21 participated in the flammability testing on
 22 behalf of Restonic?
 23 A. Because I was on the, the, the
 24 committee to research the different
 25 flammability products.

79

1 Q. Does that committee have a name?
 2 A. Probably the product development --
 3 not the product development committee, probably
 4 the -- maybe it was the product development
 5 committee, I guess that would probably be the
 6 -- and our sole purpose at that time was just,
 7 basically, to get through the flammability
 8 program.
 9 Q. Do you recall your, your, your dates
 10 of service on that committee?
 11 A. I'm still involved on that
 12 committee. And I probably started -- I, I
 13 don't recall when I started, to be honest with
 14 you.
 15 Q. You're still on the committee you
 16 said? I'm sorry.
 17 A. Yes.
 18 Q. Okay. And, and I don't, you know, I
 19 don't want to get -- I don't want to go to an
 20 area that I've asked and answered yet, but can
 21 you tell me the last time, to the best of your
 22 recollection, that that product development
 23 committee met?
 24 A. You mean in person?
 25 Q. I suppose.

80

1 A. Would be, I would say it would have
 2 been in December, probably 17th and something,
 3 in Louisville, Kentucky. Maybe December 13 of
 4 2006.
 5 Q. How often, to the best of your
 6 recollection, does that product development
 7 committee meet?
 8 A. Just depends on what, you know, the
 9 needs and the, you know, you know, when we need
 10 to. We, we do a lot of work by, you know,
 11 conference call.
 12 Q. Okay. Now you said that you
 13 conducted flammability testing on behalf of
 14 Restonic in '04, '05. Where did that testing
 15 occur?
 16 A. Underwriters Laboratory. I'm not
 17 sure of those dates, I just, I just said --
 18 Q. Approximate dates.
 19 A. -- approximately, okay?
 20 And that, you know, some of the
 21 preliminary testing was done at UL labs in
 22 Chicago.
 23 Q. So you, you had to travel to Chicago
 24 to conduct that or to observe that?
 25 A. To observe that, yes.

81

1 Q. Were there other licensees with you?
 2 A. Yes. I don't recall exactly who it
 3 all was, though.
 4 Q. Were you compensated at all by
 5 Restonic for your time for conducting the
 6 testing?
 7 A. There was a certain point there
 8 where, and I can't remember if I was at that
 9 point or not, but lately we, we are not
 10 compensated at all. Even our expenses we pay
 11 out of our own, our own, out of our own plants.
 12 Q. I thought you said just a second ago
 13 there was a certain time. Do you mean --
 14 A. I don't recall when they were,
 15 though.
 16 Q. But at some point prior there was
 17 compensation and that has ceased?
 18 A. Right. And I don't recall the point
 19 where it got to the point where -- I would
 20 probably say sometime in early '06.
 21 Q. Okay. Early '06.
 22 A. I'm not sure. You know, again, it's
 23 all -- the dates all run together sometimes.
 24 Q. Mr. Stevens, do you have any
 25 relationship, either personally -- well, let's

June 3, 2008

RICHARD STEVENS

82

1 start with personally.

2 Do you personally have any
3 relationship with anyone at Restonic?

4 MR. GAUSTAD: I'm going to object to
5 the form of the question. I mean, it's pretty
6 broad as far as what you mean by a relationship
7 with anybody on a personal level by Mr.
8 Stevens.

9 Q. (By Ms. Bernheim) Strike that.
10 Does Stevens Mattress Manufacturing
11 have any type of business relationship with
12 Mattress Giant?

13 A. With who?

14 Q. Mattress Giant.

15 A. No.

16 Q. Has Stevens Mattress Manufacturing
17 ever had a contract with Mattress Giant?

18 A. No. I don't, I don't understand
19 where this is coming from.

20 Q. As a member of, a former member of
21 Sleep Alliance up until six months ago, so
22 during your tenure as a member of Sleep
23 Alliance, did Sleep Alliance have any type of
24 corporate relationship with Mattress Giant?

25 MR. GAUSTAD: And I'm going to

83

1 object, because the purpose of this deposition
2 is for jurisdictional purposes and the motion
3 that was presented by Mr. Stevens and Stevens
4 Mattress Manufacturing as to jurisdiction, and
5 I would object to the relevancy of this line of
6 questioning as it relates to the jurisdictional
7 question and the purpose of this deposition.

8 MS. BERNHEIM: I would respond to
9 that first by saying there's absolutely no
10 order in place right now that limits the, the
11 area we can go with in this deposition and
12 there is in fact a claim for tortious
13 interference, and this line of questioning goes
14 directly to that claim, and so I'm going to
15 move forward.

16 MR. GAUSTAD: And, and I will
17 respond that when the motion was brought, the
18 plaintiffs then requested discovery on the
19 motion, which, as I understand it, the Court
20 allowed, and so that's the basis of the
21 objection.

22 It's based upon your motion to seek
23 discovery on the jurisdictional issue.

24 MS. BERNHEIM: Okay. We're going to
25 ask the questions --

84

1 MR. GAUSTAD: Yeah, I understand,
2 Miss Bernheim. I've raised the objection.

3 MS. BERNHEIM: Okay. That's fine.
4 We're going to go forward.

5 Q. (By Ms. Bernheim) Okay.

6 MS. BERNHEIM: Actually, can I ask
7 the court reporter to read back the last
8 question I asked, please.

9 (Whereupon, the question was read
10 back by the reporter.)

11 A. The only, the only relationship that
12 was going on at that time was just they were,
13 they were looking for a vendor of some
14 alternative sleep products and I think we made
15 some, not we, but Sleep Alliance, and, you
16 know, however you want to classify that, made
17 some samples for them. And, you know, ob -- we
18 never did any business with them.

19 Q. (By Ms. Bernheim) Are, are you aware
20 whether or not Restonic was previously working
21 with Mattress Giant at the time that Sleep
22 Alliance made the samples?

23 A. I'm not sure it wasn't all together
24 there. I'm not really sure of how all that,
25 all that worked together, because I believe

85

1 Mattress Giant is located in, in, in Texas, and
2 I believe that some of the samples were made in
3 the Texas facility, but I'm not sure who did
4 what or why they did it.

5 Q. Were you present at a Restonic
6 licensee meeting in Las Vegas ever?

7 Did you ever attend a Restonic
8 licensee meeting in Las Vegas?

9 A. Yes, I believe I did.

10 Q. Okay. And that licensee meeting
11 that you attended --

12 A. I think it was a stockholders
13 meeting, not a licensee.

14 Q. Okay. Was Donna, are you familiar
15 with Donna Fabia (phonetic)?

16 A. Yes.

17 Q. Was Donna Fabia present at that
18 stockholders meeting?

19 A. I don't, I don't know. I don't
20 recall.

21 Q. Do you recall ever being present at
22 a meeting where Donna Fabia discussed
23 Restonic's relationship with Mattress Giant?

24 MR. GAUSTAD: I'm going to object to
25 the form of the question. You're going to ask

June 3, 2008

RICHARD STEVENS

86

1 him to speculate as to what this Donna Fabia
2 would have said or not said.
3 MS. BERNHEIM: Well, to the best of
4 his knowledge, if he was there, does he recall
5 ever being present, hearing Donna Fabia discuss
6 the relationship between Restonic and Mattress
7 Giant?
8 A. I don't remember anything specific
9 or her even saying anything, no.
10 Q. (By Ms. Bernheim) Do you recall how
11 Sleep Alliance made contact with Mattress
12 Giant?
13 A. No, I don't. Don't.
14 Q. Give me one second.
15 MS. BERNHEIM: Can we go off the
16 record for a few minutes here, please?
17 MR. GAUSTAD: Yeah.
18 (Whereupon, there was discussion off
19 the record.)
20 MS. BERNHEIM: Okay. I have nothing
21 further.
22 MR. GAUSTAD: Do any other, do any
23 other attorneys have any questions?
24 MR. LYMAN: No. Lyman, no.
25 MR. FRIEDBERG: Friedberg, no.

87

1 MR. GAUSTAD: I just have a couple.
2 MS. BERNHEIM: Who is this speaking
3 now?
4 MR. GAUSTAD: I'm sorry. This is
5 Dan Gaustad.
6 MS. BERNHEIM: Okay.
7
8 EXAMINATION
9 BY MR. GAUSTAD:
10 Q. If my notes are correct, Mr.
11 Stevens, it's my understanding that the owners
12 of Stevens Mattress Manufacturing are John
13 Stevens, Brian Stevens and yourself. Is that
14 correct?
15 A. Yes.
16 Q. And then there was a line of
17 questioning about managers and members of Upper
18 Midwest Sleep, LLC. Do you recall that?
19 A. Yes.
20 Q. Okay. And I believe the, if my
21 notes are accurate, there was a line of
22 questioning as to the -- or there was a
23 response by you that Upper Midwest Sleep is
24 owned by Stevens Mattress Manufacturing?
25 A. Yes.

88

1 Q. Okay. Do you know, are there any
2 other owners of Upper Midwest, other than
3 Stevens Mattress Manufacturing?
4 A. No.
5 Q. And, and there was a line of
6 questioning as to members or managers of Upper
7 Midwest Sleep, LLC. Do you recall that line of
8 questioning?
9 A. Um-hum.
10 Q. Okay.
11 A. Yes.
12 Q. And do you know what the difference
13 between a member and a manager is of an LLC?
14 A. No.
15 Q. Okay. But as I understand, the
16 managers of Upper Midwest Sleep are John
17 Stevens, Brian Stevens and yourself?
18 A. Correct.
19 Q. Okay. Then there was a number of
20 questions about --
21 MS. BERNHEIM: I'm sorry, this is
22 Melissa, can I interrupt for just one second?
23 Did you say the managers were John,
24 Brian and Richard?
25 MR. GAUSTAD: That was the question.

89

1 MS. BERNHEIM: The answer was yes?
2 MR. GAUSTAD: That was the response.
3 MS. BERNHEIM: Okay.
4 Q. (By Mr. Gaustad) And, and as far as
5 your service on committees with Restonic, there
6 was a number of questions about those
7 committees and, and attendance at meetings. Is
8 it my understanding that that was in your
9 capacity as a representative of Stevens
10 Mattress Manufacturing?
11 A. Yes.
12 MR. GAUSTAD: Those are all the
13 questions I have.
14 MS. BERNHEIM: I have nothing
15 further. Thank you very much, Mr. Stevens.
16 MR. GAUSTAD: Mr. Stevens, you have
17 a right to read and review the deposition
18 transcript. I'd recommend that you do so.
19 THE DEPONENT: Okay.
20 (Whereupon, the telephonic
21 deposition was concluded at 2:27 o'clock p.m.)
22
23
24
25

June 3, 2008

RICHARD STEVENS

90

1 I, RICHARD STEVENS, do hereby
 2 certify that the foregoing 89 pages contain a
 3 full, true and correct transcript of the
 4 testimony as given by me at the aforesaid time
 5 and place with corrections, if any, as noted on
 6 the attached sheet or sheets.

7

8

9 Richard Stevens

10

11

12 Dated this day of , 2008.

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91

NOTARY-REPORTER'S CERTIFICATE

1 STATE OF NORTH DAKOTA }
 2 } ss
 3 COUNTY OF GRAND FORKS }

4 I, RUTH ANN JOHNSON, a Notary Public
 5 within and for the County of Grand Forks and
 6 State of North Dakota, do hereby certify:

7 That prior to being examined the
 8 afore-named witness was by me sworn to testify
 9 the truth, the whole truth, and nothing but the
 10 truth:

11 That said telephonic deposition,
 12 consisting of 89 pages of typewritten
 13 materials, was taken down by me in Stenotype at
 14 the time and place therein named, and was
 15 thereafter reduced to typewriting under my
 16 direction.

17 I further certify that I am neither
 18 related to any of the parties or counsel nor
 19 interested in this matter directly or indirectly.

20 WITNESS my hand and seal this 10 day of June,

21

22

23

24

25

My Commission expires October 5, 2008.

Ruth Ann Johnson - Court Reporter Service
 (701) 775-4092

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 ROYAL SLEEP
6 PRODUCTS, INC., a
7 Florida Corporation,
8 Plaintiff,
9 vs. No. 07 C 6588
10 RESTONE CORPORATION,
11 an Illinois
12 Corporation, et al.,
13 Defendants.

14 The deposition of STEPHEN RUSSO, called
15 by the Plaintiff for examination, pursuant to
16 notice and pursuant to the Federal Rules of
17 Civil Procedure for the United States
18 District Courts pertaining to the taking of
19 depositions, taken before Laura E. Locascio,
20 Certified Shorthand Reporter and Notary
21 Public in and for the County of Cook, State
22 of Illinois, at 330 North Wabash Avenue,
23 Chicago, Illinois commencing at 1:40 p.m. on
24 the 14th day of July, A.D., 2008.

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Page: 1

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

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11
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16 Suite 2200
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18 Phone: 312-840-7004
19 On behalf of the Defendants,
20 Restonic Corporation and
21 Restonic Mattress Corporation;
22
23
24

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Page: 2

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

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6 Suite 3300
7 Chicago, Illinois 60601
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9 On behalf of the Defendants,
10 Sleep Alliance, LLC; Royal
11 Bedding Company of Buffalo,
12 Jackson Mattress Co, LLC; and
13 Tom Comer;
14
15 PEARSON CHRISTENSEN & CLAPP
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17 645 Hill Avenue
18 Grafton, North Dakota 58237
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20 Appearing telephonically on
21 behalf of the Defendants,
22 Stevens Mattress Manufacturing
23 Co. and Richards Stevens;
24

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Page: 3

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 APPEARANCES: (CONT'D)
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9 Appearing telephonically on
10 behalf of the Defendants,
11 Continental Silverline
12 Products, L.P. and Drew Robins.
13
14
15 * * * * *
16
17
18
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Page: 4

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1	I N D E X	
2	WITNESS	PAGE
3	STEPHEN RUSSO	
4	MR. SALKOWSKI	6
5	MR. LYMAN	65
6	MR. GAUSTAD	66
7		
8		
9		
10	E X H I B I T S	
11		
12	DEPOSITION EXHIBIT	PAGE
13		
14	(No exhibits were marked.)	
15		
16		
17		
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20		
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22		
23		
24		

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Page: 5

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 (Witness sworn.)

2 STEPHEN RUSSO,

3 called as a witness herein, having been first

4 duly sworn, was examined and testified as

5 follows:

6 EXAMINATION

7 BY MR. SALKOWSKI:

8 Q Good afternoon, sir. As we met earlier,

9 my name is Robert Salkowski. And I'm the

10 attorney for Royal Sleep, the plaintiff in this

11 action that they brought against several

12 licensees of Restonic, as well as Restonic

13 Corporation and Restonic Mattress.

14 Could you, please, state your name

15 and address?

16 A Stephen Russo. Do you want my home

17 address?

18 Q Home address, please.

19 A 10007 Symphony Isles Boulevard, Apollo

20 Beach, Florida.

21 Q Sir, do you also have a business address?

22 A I'm the president of Restonic. So I have

23 a business address there, yes.

24 Q What is the address for Restonic at which

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Page: 6

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 you have an office?

2 A 1540 East Dundee Road, Suite 102,

3 Palatine, Illinois.

4 Q Sir, do you maintain any offices for your

5 business in the state of Florida?

6 A I have a home office I work out of out of

7 my home.

8 Q Other than the office in Palatine,

9 Illinois, does Restonic have any offices in

10 Chicago or elsewhere?

11 A Restonic Mattress Corporation, no.

12 Q How about Restonic Corporation, too?

13 A No.

14 Q Sir, you indicated that you are the

15 president for Restonic Mattress Corporation?

16 A That's correct.

17 Q You are the president also for Restonic

18 Corporation?

19 A Yes, I am.

20 Q Could you just briefly describe for two

21 corporations for me?

22 A Restonic Corporation is the owner of

23 intellectual property that it licenses to

24 Restonic Mattress Corporation and provide --

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Page: 7

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 the Restonic Mattress Corporation provides

2 brand management and marketing services to a

3 network of manufacturers who we call licensees

4 or sublicensees in the U.S.

5 Additionally, Restonic Corporation

6 directly licenses that intellectual property to

7 a number of licensees internationally.

8 Q The same type of intellectual property

9 that Restonic Mattress Corp licenses here in

10 the United States?

11 A Correct.

12 Q Sir, how long have you been the president

13 of these two corporations?

14 A Since -- I think it's late November of

15 2006.

16 Q Prior to November of 2006 approximately,

17 did you have any roles or responsibilities with

18 Restonic Corporation or Restonic Mattress

19 Corporation?

20 A I'm not sure I understand the question.

21 Q Prior to November of 2006, did you have

22 any roles or responsibilities with either of

23 the Restonic corporations?

24 A For a month. Prior to that, I was a

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Page: 8

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 consultant to Restonic Mattress Corporation and
 2 Restonic Mattress Corporation operating as the
 3 interim president of the company.
 4 Q How long were you in the role of interim
 5 president?
 6 A I'm not sure exactly. It was
 7 approximately four or five months.
 8 Q Now, you've been -- I don't know what the
 9 word is -- promoted or --
 10 A I became an employee.
 11 Q And now you're president; there's no
 12 interim before that, president?
 13 A Correct.
 14 Q When did you become an employee?
 15 A Again, I'm not sure exactly. It was in
 16 the spring of 2007.
 17 Q How did you first learn about Restonic?
 18 A I knew Restonic from a prior business
 19 that I had managed. Some of the Restonic
 20 licensees were customers of that business.
 21 Q What type of business was that?
 22 A It was latex foam. Latex International
 23 is the company.
 24 Q Did you ever work -- and I saw this in

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Page 9

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 some of the papers that have been exchanged --
 2 for Spring Air down in Florida?
 3 A I did work for Spring Air. After I left
 4 Latex International, I worked for a --
 5 actually, it was a licensee of the Spring Air
 6 group.
 7 Q And that was in Florida?
 8 A It was headquartered in Tampa, Florida,
 9 yes.
 10 Q How long were you with the Spring Air
 11 franchisee?
 12 A Approximately 15 months.
 13 Q When you indicated that one or more of
 14 the current Restonic licensees were your
 15 customers for the latex foam business, who were
 16 those customers or which licensees?
 17 A There were several. I mean, I didn't
 18 interface with them directly. I just knew they
 19 were a customer of ours.
 20 Q Did one of those customers introduce you
 21 to the Restonic position as a consultant or
 22 recommended you to the board of directors for
 23 Restonic to become an interim president?
 24 A Yes.

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Page 10

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Who was that?
 2 A There was -- actually there were two.
 3 There was Tom Comer and Drew Robins.
 4 Q Prior to you becoming interim president
 5 for Restonic -- sir, just for the sake of this
 6 deposition, I'll use the word Restonic to mean
 7 both Restonic Corporation and Restonic Mattress
 8 Corporation, unless for some reason I need to
 9 separate those two identities. And I would ask
 10 that you do the same.
 11 A That's fine.
 12 Q Did you know Mr. Comer or Mr. Robins
 13 prior to November of '06? And if so, in what
 14 capacity?
 15 A I had met Mr. Comer once as the president
 16 of Restonic, his license group. I did not know
 17 Mr. Robins prior to.
 18 Q Do you know if there was a search being
 19 conducted by Restonic Corporation to fill the
 20 position of president?
 21 A I do not know.
 22 Q Do you know why Mr. Comer or Mr. Robins
 23 identified you as an individual who may be
 24 interested in becoming interim president for

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Page 11

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 the corporation?
 2 A I do not.
 3 Q Were you friends with either Mr. Comer or
 4 Mr. Robins before November of '06?
 5 A No.
 6 Q Did you have any type of business
 7 relationship with either Mr. Comer or
 8 Mr. Robins other than Mr. Comer's business
 9 purchasing foam products from you?
 10 A No, I did not.
 11 Q Now, when you became interim president
 12 for Restonic, you obviously replaced a previous
 13 president in that role, correct?
 14 A Yes.
 15 Q Do you know who that person that you
 16 replaced was?
 17 A Yes.
 18 Q Who was that?
 19 A Carlene Evanson Peterson.
 20 Q Do you know how long Ms. Peterson had the
 21 role of president for Restonic?
 22 A Not exactly.
 23 Q Do you know approximately how long?
 24 A Approximately a year.

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Page 12

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Did anyone tell you why Ms. Peterson had
2 left the company or left the employ of
3 Restonic?
4 A She resigned.
5 Q Do you know why she resigned?
6 A I don't know.
7 Q Prior to Ms. Peterson, do you know who
8 the president was?
9 A I was told it was a fellow by the name of
10 Kevin Tolman.
11 Q Now, in your role as president for
12 Restonic, could you describe generally for me
13 your roles and responsibilities?
14 A Yes. The Restonic Corporation provides
15 brand management, marketing services and other
16 related services to its licensees.
17 My role as the president of the
18 company is to see that those services are
19 provided and that we operate in accordance with
20 the sublicensing agreements between Restonic
21 and its licensees both domestic and
22 international.
23 Q Is your role the same for both Restonic
24 Corporation and Restonic Mattress Corporation,

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Page: 13

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 or is your responsibilities different?
2 A They're a bit different.
3 Q How are they different?
4 A The Restonic Corporation's relationship
5 with the international licensees is less
6 involved.
7 Q Meaning the foreign licensees have more
8 autonomy in the way their business is operated?
9 A That's correct. The licensing agreements
10 are different.
11 Q Now, in your role as president for
12 Restonic, do you also have any responsibilities
13 for the Sleep Alliance?
14 A No, I do not.
15 Q Do you know what Sleep Alliance is?
16 A I'm aware of Sleep Alliance.
17 Q What is your understanding of that
18 company, sir?
19 A My understanding of the Sleep Alliance is
20 it's a holding company for several of the
21 licensees.
22 Q Have you ever been asked to provide any
23 type of support to the Sleep Alliance, other
24 than the contractual support that Restonic

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Page: 14

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 would give the various licensees under the
2 license agreements?
3 A As the president of Restonic?
4 Q Yes.
5 A No.
6 Q Have you done any type of -- have you
7 performed any type of support on behalf of
8 Sleep Alliance outside your role as president
9 of Restonic?
10 A I facilitated a meeting for Sleep
11 Alliance.
12 Q What was the nature of that meeting, sir?
13 A It was a business planning meeting they
14 had.
15 Q Do you know when that was?
16 A Not exactly. It was last year.
17 Q Do you recall if it was in October of
18 2007 at the Sofitel Hotel?
19 A That sounds familiar.
20 Q What was the reason why -- first of all,
21 who asked you to facilitate the meeting for
22 Sleep Alliance?
23 A Mr. Comer did.
24 Q This was at the Sofitel Hotel here in

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Page: 15

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Chicago or the Chicago area?
2 A Correct.
3 Q Do you know why you were asked by
4 Mr. Comer to facilitate this meeting?
5 A Because when I'm not working for
6 companies, I have a managerial practice that
7 facilitates meetings.
8 Q What's the name of that company, sir?
9 A It's called Apollo Solutions.
10 Q When you say facilitate a meeting, could
11 you describe what that means?
12 A That means I would work with the
13 principals of the meeting to put together an
14 agenda. And then I would direct the meeting
15 process to ensure that they achieve their
16 agenda.
17 Q Does Apollo Solutions have any equity
18 interest or any other type of ownership
19 interest in Sleep Alliance?
20 A No.
21 Q Did Sleep Alliance pay you or pay Apollo
22 Solutions for the facilitation of this meeting?
23 A No.
24 Q Does Apollo Solutions' customers

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Page: 16

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 typically pay Apollo Solutions for the
2 facilitation of these meetings?
3 A If there are -- if they become ongoing
4 engagements.
5 Q Is the work Apollo Solutions performs on
6 behalf of its customers limited to facilitating
7 meetings in the bedding industry, or is it any
8 type of industry?
9 A Any type of industry.
10 Q With respect to the meeting that occurred
11 in the Sofitel Hotel in Chicago last year, do
12 you recall who was in attendance at that
13 meeting?
14 A I recall some of the participants, but I
15 may not recall all of the participants.
16 Q Who do you recall?
17 A Mr. Comer was present. Ms. Laurie
18 Tokarz. Mr. Robins was present. A fellow by
19 the name of Ken Akers. A fellow by the name of
20 Brent Ford.
21 And there were two representatives
22 of a firm that they were working with,
23 Mann Epperson. But I don't recall their first
24 names, though.

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Page: 17

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Was that an investment firm, do you
2 recall?
3 A I believe so. I think they do a number
4 of different services, my understanding of
5 them.
6 Q Mr. Comer is a defendant in this lawsuit,
7 the same person. Laura Tokarz, do you know who
8 she works for?
9 A Her capacity, I believe, is sales and
10 marketing for Mr. Comer's businesses related to
11 bedding.
12 Q Do you know if she also works on behalf
13 of Simply Blinds or just Mr. Comer's
14 businesses?
15 A I don't know.
16 Q Ken Akers, do you know who he works for?
17 A Ken Akers is, again, in a similar type of
18 sales and marketing capacity for Mr. Richard
19 Stevens' licensing groups.
20 Q Then Brent Ford, to your knowledge, he
21 works for Drew Robins?
22 A Sales and marketing.
23 Q For Mr. Robins, correct?
24 A Mr. Robins.

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Page: 18

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Do you know how long that Sleep Alliance
2 meeting that was held in October of '07 lasted?
3 Was it a day? Was it two days?
4 A I think it was a day approximately.
5 Q Do you know why the Sleep Alliance
6 elected to hold its meeting here in Chicago, as
7 opposed to elsewhere?
8 A In working on the planning of the
9 meeting, I think it was the -- there would be a
10 central location for all parties to be able to
11 come to.
12 Q Other than the meeting that occurred in
13 October of '07 here in Chicago, are you aware
14 of any other meeting in which Sleep Alliance
15 conducted here in Illinois?
16 A No.
17 Q Now, sir, I want to talk briefly just for
18 background information about the manner in
19 which Restonic Corporation and Restonic
20 Mattress Corporation is structured. You have
21 shareholders, correct?
22 A Yes, we do.
23 Q Currently do you know who those
24 shareholders are?

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Page: 19

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A I know in general the shareholders, but I
2 don't know specifically.
3 Q I just want to run down some names here
4 that are relevant to this action. And let's
5 see if you know they're a shareholder or not.
6 Mr. Comer?
7 A I believe Mr. Comer's companies, I
8 believe, are shareholders.
9 Q That includes Royal Bedding or Jackson
10 Mattress. Do you believe either one of those
11 may be shareholders?
12 A I've seen those names on shareholder
13 records.
14 Q How about Richard Stevens, do you know if
15 he is a shareholder, either he or Stevens
16 Mattress?
17 A I believe they are, yes.
18 Q Drew Robins or Continental Silverline, do
19 you know if they are shareholders?
20 A I believe, yes.
21 Q Gary Robinson or his company, do you
22 know?
23 A I believe so, yes.
24 Q The Sleep Alliance, do you know whether

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Page: 20

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 or not they are share -- or it is a shareholder
2 of Restonic?
3 A I believe it to be so. But I don't
4 recall personally having seen those records
5 yet.
6 Q In addition to the shareholders, Restonic
7 also has a board of directors, correct?
8 A Restonic Corporation has a board of
9 directors. And Restonic Mattress Corporation
10 have a board of directors. There are two
11 separate boards of directors.
12 Q Are any of the people who are the
13 directors for Restonic Corporation also
14 directors for Restonic Mattress Corporation?
15 A Today, yes. In the past, no.
16 Q What director who sits on the board of
17 directors for Restonic Corporation is also a
18 director for Restonic Mattress Corporation?
19 A Tom Comer.
20 Q How long has Mr. Comer sat as a director
21 on both of these boards?
22 A From the point in which the Restonic
23 Corporation board was elected at the end of
24 last year. So it would be -- I think the

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Page: 21

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 meeting was December 29th or 30th of last year.
2 Q December 29th or 30th of '07?
3 A Correct.
4 Q Prior to December of '07, did Mr. Comer
5 also sit on one of the boards?
6 A He was on the Restonic Mattress
7 Corporation board from December of '06.
8 Q Who nominated Mr. Comer, if you know, to
9 the boards for both of these corporations?
10 A I don't know.
11 Q Now, to your knowledge, are there board
12 of director meetings for Restonic Corporation
13 and for Restonic Mattress Corporation?
14 A On occasion there are meetings.
15 Q Sir, are you a board member for either of
16 those two corporations?
17 A I'm a board member for Restonic Mattress
18 Corporation.
19 Q And besides yourself and Mr. Comer, who
20 else is a board of director for Restonic
21 Mattress Corporation?
22 A Daniel Cantor. Lee Quinn.
23 Darryl Butler.
24 Q Does either Mr. Cantor, Mr. Quinn or

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Page: 22

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Butler have any interest in Restonic Mattress
2 Corporation, other than in their role as
3 director?
4 A Mr. Quinn is the chief executive officer
5 of another Restonic Mattress Corporation
6 sublicensee.
7 Q Which one is that?
8 A It's the group that's based out of New
9 Albany, Indiana.
10 Q Do you know how long Mr. Quinn has been
11 on that board of directors?
12 A He came on the board of directors on the
13 same day Mr. Comer did: December of 2006.
14 Q Now, when the board of directors has
15 meetings, are the meetings in person or are
16 they conducted by telephone?
17 A Which group?
18 Q Good question. Let's go with Restonic
19 Corporation first.
20 A The only meetings of the Restonic
21 Corporation boards that I have participated in
22 have been by phone.
23 Q Restonic Mattress Corporation, have there
24 been -- in addition to telephone meetings, have

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Page: 23

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 there been in-person meetings?
2 A There's been one in-person meeting in the
3 time I've been with Restonic.
4 Q Where was that in-person meeting?
5 A The in-person meeting was in Buffalo,
6 New York.
7 Q Do you know why the directors elected to
8 have the corporate meeting in Buffalo, New
9 York, as opposed to Illinois?
10 A For expense purposes. Two of the
11 directors live in Buffalo, New York.
12 Q That's Mr. Comer?
13 A Mr. Comer and Mr. Cantor.
14 Q Do you know if Mr. Cantor is friendly
15 with Mr. Comer?
16 A I do not know.
17 Q Do you know what Mr. Cantor does other
18 than sit on the board of directors?
19 A Mr. Cantor -- I believe Mr. Cantor is the
20 executive director for the Jewish Federation
21 League of Buffalo.
22 Q Now, other than the -- in the time that
23 you had as president for Restonic, other than
24 the Buffalo, New York meeting, were there any

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Page: 24

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 other board of directors meetings conducted by
 2 RMC either in person or by telephone?
 3 A Yes.
 4 Q Was that in person or by telephone?
 5 A By telephone.
 6 Q Do you know how many times -- let me get
 7 into that, sir.
 8 Do you know how many times a year
 9 the board of directors meet for both of those
 10 companies?
 11 A There's not a set schedule.
 12 Q Within the year and a half or so that
 13 you've been a president, has the board for
 14 those two companies met on pretty much the same
 15 type of schedule, same number of times per
 16 year? Or has that changed?
 17 A No.
 18 Q In the last year has it been more or less
 19 than when you first joined?
 20 A Less.
 21 Q What is the reason, if any, that the
 22 board of directors is meeting less now?
 23 A There's less need to meet.
 24 Q Why is there less need to meet?

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Page: 25

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A Because when I first became the interim
 2 president and president of Restonic, you're in
 3 a transition from one president to a new
 4 president. So the board had greater oversight
 5 of the company.
 6 Q In this lawsuit, Restonic and Restonic
 7 Mattress Corporation produced some corporate
 8 minutes of the various boards of directors.
 9 And have you seen those prior to --
 10 well, let me ask, have you seen the board of
 11 directors minutes?
 12 A For the meetings that I've attended, yes.
 13 Q Did those board of directors meetings
 14 usually reflect the participants in that
 15 meeting, whether or not they were in person or
 16 by telephone?
 17 A I believe they do.
 18 Q Now, sir, in addition to board of
 19 directors meetings -- strike that.
 20 In addition to the board of
 21 directors participating in these various
 22 meetings by telephone, are there any other
 23 Restonic licensees who are asked to participate
 24 in the board of directors meetings?

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Page: 26

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A On a regular basis, no.
 2 Q In terms of Restonic Mattress Corporation
 3 and Restonic Corporation, does anyone other
 4 than yourself participate in those meetings?
 5 A I'm not sure I understand the question.
 6 Q Other than yourself, does any other
 7 employee of Restonic or Restonic Mattress
 8 Corporation participate in the board of
 9 directors meetings?
 10 A On a regular basis, no.
 11 Q Now, in addition to the
 12 regularly-conducted board of directors meetings
 13 of the two corporations done either in person
 14 or by phone, do you have contact with the board
 15 of directors to discuss Restonic business on a
 16 frequent basis during the year?
 17 A No.
 18 Q Do you have any contact with any of the
 19 board of directors outside of the board of
 20 directors meetings to discuss Restonic
 21 business; not the business that they may have
 22 as a licensee?
 23 A That's not related to the board?
 24 Q That's not related to the board.

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Page: 27

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A Repeat the question again. They kind of
 2 meld together.
 3 Q I didn't go over the instructions at the
 4 beginning, but I'll do so now since you brought
 5 it up.
 6 If there are any questions that I
 7 have asked that you're not familiar with in
 8 terms of you don't understand what I'm
 9 saying -- and that may happen once or twice
 10 because I'm just going off my head with some of
 11 these questions -- let me know and I'll try to
 12 rephrase it.
 13 If you need to take a break for
 14 whatever reason, let me finish the line of
 15 questioning and go take a break.
 16 If I ask you for an estimate --
 17 you're doing pretty well -- you're giving me an
 18 estimate. I don't want you to guess. An
 19 estimate would be how long this table is. A
 20 guess would be long my table in my office is,
 21 that type of thing.
 22 With respect to contact that you
 23 have outside of the board of directors
 24 meetings, do you have any contact to discuss

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Page: 28

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 with the board of directors Restonic's
2 business?
3 A As individual directors?
4 Q As individual directors.
5 A That's related to Restonic?
6 Q Yes, sir.
7 A Yes.
8 Q What type of contact -- I don't want
9 specific conversations that you had. But
10 generally what are the nature of the
11 discussions you had with the board of directors
12 regarding Restonic outside of the board of
13 director meetings?
14 A First of all, you need to be clear.
15 Dan Cantor is the chairman of the board. So
16 any time that there's a meeting -- desired or
17 scheduled -- I'm talking with Dan about the
18 meeting. I'm doing that.
19 There may be discussions with a
20 board member about clarity of a topic coming
21 into the meeting or information that need to be
22 provided to be prepared for the meetings.
23 Outside of that, whenever there's a
24 matter that involves licensees, those

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Page: 29

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 discussions are only held with Dan Cantor and
2 Darryl Butler, who are outside directors.
3 So we have no discussion of any
4 licensee-related matters at the board level
5 that would involve Mr. Comer or Mr. Quinn since
6 they are also licensees.
7 Q Are you aware of any director meetings in
8 which Mr. Comer traveled to Illinois to attend
9 in person?
10 A Director meetings?
11 Q Director meetings.
12 A No.
13 Q With respect to the shareholders, you
14 also -- you being Restonic -- Restonic also has
15 shareholder meetings, is that correct?
16 A Yes.
17 Q Are they annual shareholder meetings?
18 A There's a requirement for annual
19 shareholder meetings of each group.
20 Q Each group being Restonic Corporation and
21 Restonic Mattress?
22 A Yes.
23 Q Now, with respect to the Restonic
24 Mattress Corporation shareholder meetings.

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Page: 30

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 where are they held?
2 A I can only speak to where they've been
3 held as -- while I've been a member of
4 Restonic.
5 Q I understand that.
6 A There was a meeting -- the first meeting
7 with the group was in Louisville, Kentucky.
8 Q Do you know when that was?
9 A That was in December of 2006.
10 Q Do you recall who was in attendance at
11 that meeting? Or let me ask, the shareholders.
12 A The shareholders.
13 Q Do you know of any shareholder who was
14 not in attendance at that meeting?
15 A I'd have to go look at the attendance
16 log.
17 Q In addition to the Louisville, did you
18 have an annual meeting in December of '07?
19 A It was a telephonic meeting.
20 Q Why did you decide to have a telephonic
21 meeting for the annual meeting, as opposed to
22 an in-person meeting?
23 A Because it was inconvenient for all the
24 licensees to come to a central location.

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Page: 31

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Do you know if Mr. Comer participated in
2 that telephone meeting?
3 A I believe he did, yes.
4 Q Do you know if Mr. Robins participated in
5 that meeting?
6 A I believe he did, yes.
7 Q Are you aware of whether or not
8 Richard Stevens participated in that meeting?
9 A I believe he did.
10 Q Now, in addition to the December '07
11 telephonic shareholders meeting, has there
12 recently been a shareholders meeting?
13 A No.
14 Q Has there been any recent meeting here in
15 Chicago in which licensees of RMC participated
16 and attended?
17 A Yes.
18 Q When was that?
19 A It was on June 4th.
20 Q What was the nature of the June 4th, 2008
21 meeting?
22 A I held a meeting of all the licensees to
23 present to the group a vision and revised
24 company direction.

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Page: 32

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Where was that meeting held, sir?

2 A It was at the Double Tree Hotel.

3 Q Here in Illinois?

4 A Chicago. The airport. That was a

5 licensee meeting.

6 Q Different than a shareholder meeting?

7 A Correct.

8 Q Now, do you know who attended that

9 meeting? And I'll ask specific names after

10 that. Drew Robins?

11 A Yes, he attended the meeting.

12 Q How about his employee Brent Ford?

13 A I believe Mr. Ford was there. I can't

14 say for sure, but I believe he was. I don't

15 remember. He may not have been there. I don't

16 think he was, as a matter of fact. He was not.

17 Q Who about Tom Comer?

18 A Mr. Comer was there.

19 Q Was Laura Tokarz?

20 A I believe she was, yes.

21 Q Ms. Tokarz is the sales and marketing for

22 Mr. Comer?

23 A Yes.

24 Q How about Richard Stevens?

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Page: 33

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A Richard was there, yes.

2 Q And was Ken Akers there also?

3 A Yes, he was.

4 Q Do you know an individual by the name

5 of -- I can't find it.

6 Now, how many times a year do you

7 hold a licensee meeting?

8 A There's no set pattern.

9 Q There's no set pattern for the licensee

10 meeting?

11 A No. They're as needed. Generally what

12 we will do -- many of the licensees attend the

13 Las Vegas world market. We will convene then

14 with those who attend there.

15 Q So you'd hold the meeting in Las Vegas?

16 A Yes.

17 Q Now, in addition to the licensee meeting

18 that you have, do you conduct any type of

19 telephone licensee meetings from time to time?

20 A Rephrase the question.

21 Q The meeting that you had on June 4th of

22 '08 was an in-person meeting that you had at

23 the Double Tree Hotel in O'Hare.

24 In addition to bringing the

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Page: 34

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 licensees in from the various states to

2 Illinois, do you also sometimes conduct

3 telephone meetings in which the licensees

4 participate?

5 A Can I provide some clarity?

6 Q Absolutely.

7 A The meeting that we had in June was the

8 first time that we've had all licensees come to

9 Illinois. So any other licensee meetings that

10 we've had in person like that have been

11 adjacent to this Las Vegas market, whenever it

12 occurs.

13 Q So other than either the meetings -- the

14 licensee meetings that take place with the

15 Las Vegas meeting or Las Vegas show and this

16 June 4th, 2008 meeting, there hasn't been any

17 licensee meetings before that time, correct?

18 A If you're referring to a meeting that

19 would involve all licensees, all licensees

20 invited, no.

21 Q Now, in addition to the licensee meetings

22 that we talked about, do you ever have occasion

23 to meet with licensees here in Illinois?

24 A I'm not sure I understand the question.

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Page: 35

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q In your role as president, do you ever

2 meet with Restonic licensees?

3 A Individually or collectively?

4 Q Individually.

5 A If they come to Illinois. And they -- I

6 mean, they may stop by.

7 Q Now, individually, do you know if

8 Drew Robins has ever stopped by and visited you

9 in your role as president?

10 A He has not.

11 Q Do you know if his employee, Brent Ford,

12 has ever stopped by to visit you in your role

13 as president of Restonic here in Illinois?

14 A He has not.

15 Q Tom Comer, has he ever visited you here

16 in the State of Illinois to discuss matters

17 dealing with his license?

18 A No.

19 Q How about Laurie Tokarz, has she ever

20 visited you?

21 A No.

22 Q How about Richard Stevens, has he ever

23 visited you here in Illinois?

24 A No.

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Page: 36

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs.

1 Q And his employee Ken Akers?

2 A No.

3 Q Now, Restonic Corporation or Restonic

4 Mattress Corporation also has a program known

5 as the national account program. Are you

6 familiar with that?

7 A Vaguely.

8 Q Tell me what your knowledge of the

9 national account program is.

10 A Only -- I've seen a document that

11 reflected -- I believe it was the intent of

12 having a national account program.

13 Q During the time that you've been

14 president, has that ever been in existence, to

15 your knowledge?

16 A I have not been able to find any record

17 that it's operational.

18 Q Have you ever found any document or

19 correspondence indicating that at one point in

20 time there was a national account program that

21 franchisees or licensees of Restonic

22 Corporation participated in?

23 A Not exactly. Some licensees have

24 referred to it from time to time, which is why

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Page: 37

Royal Sleep Products, Inc. vs. Restonic Corporation

1 I tried to figure out what it was. But it's

2 not an operative matter.

3 There are no national accounts, nor

4 are there any accounts that are being proposed

5 to be national accounts. So it's never become

6 an active matter while I've been president of

7 Restonic.

8 Q Have you ever found an account that was

9 designated as a national account?

10 A Not while I've been president of

11 Restonic.

12 Q How about your review of the paperwork

13 for Restonic, have you ever found an account

14 that was designated as a national account

15 program prior to your role as president?

16 A I know of no record of any account

17 becoming a national account.

18 Q To your knowledge, there's no national

19 account program in existence today, is that

20 right?

21 A There's a document that says the national

22 account program, but it's not signed. And I

23 have no records of the board or anything that

24 says that it was ever approved. That confuses

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Page: 38

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 me.

2 Q In your role as president, to your

3 knowledge, there's no --

4 A We have no national accounts.

5 Q No national account program?

6 A We have no national accounts.

7 Q Now, in addition to the various meetings

8 we've described, is there something also called

9 an advisory board for Restonic?

10 A The bylaws of Restonic Mattress

11 Corporation provide for an advisory board.

12 Q What is the advisory board, sir?

13 A If I understand it, the advisory board is

14 three licensees, whose role is to provide

15 advisory services -- if that's the right

16 term -- to Restonic president and possibly the

17 board of directors regarding marketing and

18 financial matters.

19 Q In a way, is that the licensee telling

20 you as president what they believe is a good

21 marketing approach or a financial concern that

22 the licensee group has generally?

23 A Can I ask him a question?

24 Q Well, you can't ask him a question if it

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Page: 39

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 doesn't relate to some type of attorney/client

2 privilege. If you're asking him how to answer

3 the question, that's not appropriate.

4 But if you're asking him whether or

5 not something you're going to tell me may be

6 protected by an attorney/client privilege or

7 something that he told you, I'll let you go

8 ahead and ask him.

9 MR. MENDELSON: If it's clarification

10 you don't understand the question, just ask him

11 for it to be rephrased.

12 THE WITNESS: Just restate the question.

13 BY MR. SALKOWSKI:

14 Q Let me rephrase it, and then I'll get

15 back to the question, sir.

16 The advisory board, is that an

17 active board currently with Restonic?

18 A No.

19 Q The board members, are they John Quinn,

20 Robert Parker and Jim McKenny, to your

21 knowledge?

22 A Yes.

23 Q Why isn't the advisory board active right

24 now?

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Page: 40

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A The need for the advisory board was
2 eliminated when the bylaws of Restonic Mattress
3 Corporation were changed in December of 2006 to
4 add licensee members to their RMC board.

5 Prior to that time, the RMC board
6 was comprised of the president and outside
7 directors. So the advisory board existed, as I
8 understand it, for the licensees to be able to
9 ensure marketing oversight and financial
10 oversight of their holdings, which is Restonic
11 Mattress Corporation.

12 Q Now, in addition to the meeting we spoke
13 about including the advisory board meeting, is
14 there something called a marketing planning
15 committee or a marketing planning group that
16 holds meetings?

17 A It's currently called the product
18 marketing committee.

19 Q Has that been in existence since you took
20 over in the role of president of Restonic?

21 A Yes.

22 Q Product marketing?

23 A Product marketing.

24 Q Has the name changed, or has it always

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Page: 41

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic C

1 been product marketing --

2 A There were two committees previously.

3 Q What was the other committee?

4 A There was a product committee and a
5 marketing committee.

6 Q Streamlining our flow charts, right?

7 A Something like that.

8 Q Who were the members of the product
9 marketing committee, to your knowledge?

10 A There are -- you said in addition to
11 myself, there are -- again, this is current
12 membership -- there are six members.

13 David Walker, who is an employee of
14 the Restonic Oregon license. Chris Sanders,
15 who's an employee of the Restonic Twin Falls
16 Idaho license. Laurie Tokarz, who is an
17 employee of the Alliance Sleep Group.

18 Ken Akers, who's an employee of
19 Stevens group. Bob Quinn, who's an employee of
20 the New Albany group. And Brent Ford, who's an
21 employee of Houston.

22 Q Now, how often does the product marketing
23 committee meet?

24 A As needed.

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Page: 42

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q In 2007, approximately how many times did
2 that committee meet?

3 A It usually meets telephonically. I would
4 have to venture a guess.

5 Q Have there ever been meetings conducted
6 in the State of Illinois among the members of
7 the product marketing committee during the
8 period of time that you've been president?

9 A Yes.

10 Q Approximately how many times have
11 meetings been conducted in the State of
12 Illinois where the product marketing committee
13 members met?

14 A Maybe three or four times.

15 Q So since approximately November of '06,
16 the product marketing committee have met in
17 person in the State of Illinois, is that
18 correct?

19 A For clarity for you, there were two
20 committees. So the marketing committee would
21 have met. The product committee would have
22 met. When I saw that, I said let's make them
23 one. And then the -- to answer your question,
24 yes.

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Page: 43

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q So regardless if it was a marketing
2 committee or product committee or product
3 marketing committee --

4 A On occasion they've met --

5 Q -- approximately six times since you took
6 over as president?

7 A I don't know.

8 Q Approximately?

9 A I don't know. I've been involved with
10 the committee actively since the first of the
11 year.

12 Q First of '08?

13 A First of '08.

14 Q And then who was directing that committee
15 or the committees prior to you actively
16 becoming involved?

17 A We had a young lady who was the
18 vice-president of sales and marketing for
19 Restonic named Donna Fabia.

20 Q And she was involved in that?

21 A Her responsibility was to chair that
22 committee -- one of her responsibilities.

23 Q Now, to your knowledge, has the
24 make-up -- and when I say make-up, I mean the

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Page: 44

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 membership -- changed since when you became
 2 president up until today?
 3 A Yes.
 4 Q How has the make-up of those two
 5 committees, now one, changed?
 6 A Two things happened. One, there's a
 7 fellow who was the sales and marketing VP for
 8 Restonic Miami, who was on the -- I think he
 9 was on the marketing committee, but he resigned
 10 from that company. So he is no longer an
 11 employee.
 12 And when we combined the two
 13 committees together, there were then two people
 14 from Restonic New Albany group. So one of
 15 those two came off.
 16 Q Other than the change in the Miami
 17 licensee and the New Albany licensee, has
 18 Ms. Tokarz, Mr. Akers and Brent Ford always
 19 been on one or both of those committees?
 20 A At my request, yes.
 21 Q Have they always -- have they been --
 22 strike that.
 23 In the six or so meetings that have
 24 taken place in the State of Illinois since you

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Page: 45

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 became president, has Mr. Akers, Ms. Tokarz and
 2 Mr. Ford always attended in person?
 3 A Not always.
 4 Q Have there been times when Ms. Tokarz has
 5 attended a product marketing committee
 6 personally in the State of Illinois?
 7 A Yes.
 8 Q Do you know how many times?
 9 A I don't recall.
 10 Q Do you know if it was more than two?
 11 A I don't recall. More than likely, yes.
 12 Q Ken Akers, do you recall whether or not
 13 there was an instance when Mr. Akers personally
 14 attended a product marketing committee in the
 15 State of Illinois?
 16 A Yes.
 17 Q Do you know how many times?
 18 A Not exactly.
 19 Q And Brent Ford, are you aware of the
 20 number of times when Mr. Ford had attended in
 21 person a product marketing committee meeting in
 22 the State of Illinois?
 23 A Not exactly. But he has been here.
 24 Q Now, in addition to the various meetings

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Page: 46

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 we spoke about on the committees, are there any
 2 other committees -- other than the various
 3 meetings we spoke about -- and I won't go
 4 through them -- are there any other committees
 5 or meetings that Restonic holds from time to
 6 time either among its board of directors, its
 7 shareholders or its licensees?
 8 A There is one other committee. It's
 9 called a manufacturing committee.
 10 Q What is the nature of that committee,
 11 sir?
 12 A In the similar fashion, it's a collection
 13 of licensees that work to collaborate on
 14 manufacturing programs.
 15 Q Last year in some of the documents I
 16 reviewed there was some information about a
 17 fire retardant program you guys were working
 18 on?
 19 A Yes.
 20 Q What committee was responsible for that?
 21 Was it the product marketing or manufacturing?
 22 A Manufacturing committee.
 23 Q Who sits on the manufacturing committee,
 24 sir?

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Page: 47

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A I think -- I don't know the exact
 2 membership. It's a pretty open forum. The
 3 manufacturing committee operates, but really
 4 doesn't have an operative role. Whereas the
 5 product marketing committee recommends to
 6 Restonic, you know, input for marketing
 7 services program. The manufacturing committee
 8 is really more of a collection of licensees to
 9 discuss or collaborate.
 10 Q To your knowledge, does the marketing
 11 committee ever meet in the State of Illinois to
 12 discuss---
 13 A You mean the manufacturing committee?
 14 Q I'm sorry. To your knowledge, has the
 15 manufacturing committee ever met in the State
 16 of Illinois to discuss manufacturing concerns
 17 relative to Restonic?
 18 A I believe it's had one or two meetings
 19 since I've been president.
 20 Q Do you know who participated in those
 21 meetings?
 22 A I was not there. But I believe most of
 23 the licensees participated.
 24 Q Where was that meeting held?

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Page: 48

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A I think it was here in Chicago.
 2 Q Do you know what hotel?
 3 A No, I don't.
 4 Q You indicated -- I'm sorry if I'm
 5 misstating your testimony -- there were two
 6 manufacturing committee meetings that you're
 7 aware of?
 8 A I think so. I know there was one for
 9 sure. There may have been a follow-on meeting.
 10 Q You did not participate in that
 11 manufacturing committee?
 12 A No.
 13 Q Now, in your role as president of
 14 Restonic, are there occasions when licensees
 15 call you up or call Restonic up to obtain
 16 support in their role as licensee?
 17 A I'm not sure I understand the question.
 18 Q Do you ever get calls from licensees
 19 asking for some type of support from Restonic?
 20 A What do you mean by support?
 21 Q Support dealing with the franchise
 22 agreement or their license agreement, concerns
 23 they have regarding how an aspect of their
 24 business is being operated that they would like

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Page: 49

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 some direction on from you?
 2 A Yes. With that definition, yes.
 3 Q Are those concerns expressed to you by
 4 telephone? Or do those licensees -- we kind of
 5 went over there -- come to you in person here
 6 in Illinois and discuss those issues?
 7 A By telephone. I can only recall once in
 8 the time I've been president where licensees
 9 come to Chicago to see me. I have visited most
 10 of the licensees' facilities.
 11 But they don't come to Chicago,
 12 unless I ask them to come here or we have a
 13 formally-called meeting of some structure.
 14 They don't have any reason to come here really.
 15 Q Now, have you ever assisted Tom Comer in
 16 relation to the Sleep Alliance stock
 17 consolidation of Restonic to develop candidates
 18 to transition the leadership of the company
 19 beyond the first quarter of 2008? Does that
 20 sound familiar at all to you?
 21 A No. Try again.
 22 Q I'll show you a document later on during
 23 a break or after a break. But have you ever
 24 assisted the Sleep Alliance or Tom Comer

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Page: 50

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 individually in locating employees for the
 2 Sleep Alliance or employees for Restonic?
 3 A I'm having a hard time getting the
 4 question.
 5 Q I'll get the document during a break, and
 6 we'll get back to that.
 7 Now, in addition to the October of
 8 '07 Sleep Alliance meeting that you
 9 facilitated, has there ever been any other
 10 Sleep Alliance meetings, to your knowledge,
 11 held here in the State of Illinois?
 12 A Not to my knowledge that I can recall.
 13 Q Do you provide any other type of support
 14 to the Sleep Alliance other than having
 15 facilitated this meeting you spoke about?
 16 A Only anything that would be required in
 17 my role as president of Restonic.
 18 Q Sir, do you recall a marketing
 19 planning -- product marketing committee meeting
 20 that occurred in September of 2007 at O'Hare
 21 Double Tree? I think we may have touched upon
 22 that earlier.
 23 A There was a product marketing committee
 24 meeting that we had in September, yes.

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Page: 51

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q That was at the O'Hare Double Tree?
 2 A I believe it was, yes.
 3 Q Do you know if Brent Ford was in
 4 attendance at that meeting?
 5 A I think he was, but I don't recall
 6 exactly.
 7 Q How about Tom Comer, do you recall if he
 8 was there?
 9 A He was not.
 10 Q Sir, do you recall a meeting in or about
 11 October of 2007 at the Rosemont Sofitel Hotel
 12 to discuss brand positioning with a company
 13 called Divareto & Associates?
 14 A I called the meeting.
 15 Q And that was in October -- approximately
 16 October of '07. Do you recall that?
 17 A I thought that was September that we were
 18 referring to. That was I thought the meeting
 19 you were just referring to. It may have been
 20 October.
 21 Q Do you know if Brent Ford participated in
 22 that meeting with Divareto & Associates?
 23 A I don't recall if he was there. He was
 24 invited to be there.

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Page: 52

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q How about Laurie Tokarz, do you know if
2 she attended that meeting on behalf of the
3 Sleep Alliance?
4 A I believe Laurie did attend.
5 Q Do you know if Mr. Comer -- Tom Comer --
6 He did not attend that meeting.
7 Q How about Drew Robins?
8 A No. That was a meeting for the product
9 marketing committee.
10 Q Do you recall a meeting that took place
11 in or about November -- I'm sorry. Strike
12 that.
13 Do you recall a meeting that took
14 place in or about September of '07 at the
15 Continental President's Club at O'Hare to
16 discuss Restonic brand proposal?
17 A Yes.
18 Q What was the purpose, just generally, of
19 that meeting?
20 A I called that meeting also. The product
21 marketing committee was interviewing three
22 different companies in order to determine which
23 one we wanted to work with on our brand
24 positioning program.

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Page: 53

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q This was one of the continuations of that
2 meeting? The meeting that was held in
3 September of '07 at the O'Hare airport
4 Continental President's Club, that was one of
5 those three meetings?
6 A It was one meeting which all three
7 vendors came in sequence. What we did is we
8 held the meeting at the airport in order to be
9 able to shuttle people in and out and have all
10 the meetings done in half a day.
11 Q Do you know who participated in that
12 meeting on behalf of Restonic licensees? And
13 I'll go through the names. Do you know if
14 Brent Ford was at that meeting?
15 A Yes, I believe Brent was at that meeting.
16 Q How about Laurie Tokarz?
17 A I don't remember if Laurie was at that
18 meeting or not.
19 Q How about Ken Akers?
20 A I think Ken was at the meeting.
21 Q Did I say Brent Ford already? Yeah, I
22 think I did. That was the first one. Was
23 Tom Comer in that meeting?
24 A I believe Tom came to that meeting.

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Page: 54

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Was drew Robins at that meeting?
2 A I don't recall.
3 Q Do you recall if Richard Stevens was at
4 that meeting?
5 A No, Richard was not at that meeting.
6 Q Was anyone on Mr. Stevens' behalf at that
7 meeting?
8 A Akers.
9 Q Ken Akers. I'm sorry.
10 A Again, we need to be clear. That's a
11 product marketing committee meeting. So Ken
12 was a member of it. He was there on Richard's
13 behalf. Another fellow by the name of
14 Bob Quinn was also at that meeting. He was on
15 the product marketing committee.
16 Q Now, with respect to these product
17 marketing committees, do you have to be a
18 licensee or an employee of a licensee to attend
19 or to participate in these meetings?
20 A To be a member.
21 Q Who pays for the cost and expenses of the
22 participation for these meetings?
23 A Restonic does. And we reimburse the
24 travel expenses.

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Page: 55

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Whose decision is it whether or not a
2 licensee's employees will sit on one of these
3 committees? Ultimately, you as president may
4 ask a licensee if, you know, one of his or her
5 employees could sit on the meeting, but it's
6 the licensee's ultimate decision to decide
7 whether or not he's going to allow the employee
8 to participate, correct?
9 A Of course.
10 Q That individual who participates on
11 behalf of the licensee and those product
12 marketing committees are helping, not only
13 Restonic, but they're helping their licensee
14 employees, correct?
15 A The purpose is to help Restonic.
16 Q Which, in turn, helps the licensees?
17 A The whole group of licensees.
18 Q Now, in addition to these various
19 meetings we've spoke about -- again, I'm not
20 going to go through the litany of what they
21 are -- have there been any other meetings that
22 you're aware of that have been held in Illinois
23 in which one or more licensees have
24 participated either directly or through one of

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Page: 56

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 their employees or agents?
 2 A You know, not that I recall.
 3 Q Sir, are you aware of any employees of
 4 Restonic who have actually worked for a
 5 licensee of Restonic?
 6 A Could I have the question again.
 7 Q Are you aware of any Restonic employee
 8 who has actually worked on behalf of a Restonic
 9 licensee?
 10 A You mean like a current employee who was
 11 formerly an employee of a licensee? Is that a
 12 way to describe it?
 13 Q While that individual was employed by
 14 Restonic Corporation or by Restonic Mattress
 15 Corporation, he or she was actually also doing
 16 work on behalf of one of the Restonic
 17 licensees.
 18 A Again, I'm losing the --
 19 Q We have an employee of Restonic. He or
 20 she does work also on behalf of a licensee for
 21 Restonic and is paid by the licensee. Are you
 22 aware of any situations where that occurred?
 23 A I'm not.
 24 Q Are you aware of any situations where

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Page: 57

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Drew Robins employed an employee of Restonic
 2 Corporation to do work on his behalf for his
 3 facilities in Houston?
 4 A I'm not aware of that.
 5 Q Now, have you ever been asked on behalf
 6 of the Sleep Alliance to determine whether or
 7 not Gary Robinson was interested in selling his
 8 business to the Alliance?
 9 A No.
 10 Q Have you ever had any conversations on
 11 behalf of the Sleep Alliance with Gary Robinson
 12 where you asked Mr. Robinson whether or not he
 13 would accept payments over time if he were to
 14 sell his business to either the Sleep Alliance
 15 or another one of its licensees?
 16 A The exact answer to that question is no.
 17 Q Through your voice and through the
 18 wording you used, is there some other type
 19 of --
 20 A I initiated the conversation.
 21 Q With Mr. Robinson?
 22 A Yes.
 23 Q You did that on behalf of who?
 24 A Restonic.

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Page: 58

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q What was the purpose of that?
 2 A To facilitate consolidation of Restonic's
 3 licensees. I wasn't asked to do it by anybody.
 4 Q I have a little more time. I just want
 5 to take a five-minute break, and we'll get back
 6 and I'll be ten, fifteen minutes. That's it.
 7 (A short break was had.)
 8 MR. SALKOWSKI: Back on the record.
 9 I'm going to show Mr. Russo a
 10 document. It's one of the documents that was
 11 produced by Mr. Mendelsohn either on Friday or
 12 today.
 13 I'm not going to introduce it,
 14 unless you guys want me to. And then I don't
 15 have a problem with it. But I had asked him a
 16 question dealing with the developed candidates.
 17 I'm going to show him. For the
 18 record, it's marked R00843. And it's the
 19 minutes of a telephonic meeting of the Restonic
 20 Mattress Corporation board of directors,
 21 October 17, 2007.
 2 BY MR. SALKOWSKI:
 23 Q Sir, I'd just ask you to -- you can look
 24 at the whole document, of course. But I'm

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Page: 59

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 going to ask you questions on the last
 2 paragraph that begins the Alliance sleep
 3 program.
 4 A (Witness peruses document.)
 5 Q Sir, I had asked you before the break
 6 whether or not you had any contact with either
 7 Mr. Comer or Sleep Alliance.
 8 And I read to you that portion of
 9 the telephonic meetings where it says that
 10 Steve Russo -- or you -- is going to work with
 11 Comer to develop candidates to transition the
 12 leadership of the company beyond the first
 13 quarter of 2008.
 14 Do you recall what that was
 15 referring to?
 16 A Yes, I do.
 17 Q What is that?
 18 A That was to work with Tom to identify
 19 candidates to be president of Restonic.
 20 Q Could I assume that position has been
 21 filled by you?
 22 A No.
 23 Q So you're still looking actively for
 24 another president?

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Page: 60

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 A Yes.

2 Q Now, sir, does any of the Restonic

3 licensees purchase anything directly from

4 Restonic Corporation or Restonic Mattress

5 Corporation?

6 A Yes.

7 Q What is the nature of the products that

8 are purchased or services that are purchased?

9 A Well, the services are the marketing

10 services of brand management, which they pay a

11 licensing fee for. The products are actually

12 marketing materials that Restonic develops.

13 Q Those are purchased by the licensees from

14 Restonic here in Illinois?

15 A Yes.

16 Q In addition to marketing materials, do

17 the licensees purchase anything else directly

18 from Restonic?

19 A Not that I'm aware of.

20 Q How about whether or not Restonic

21 purchased anything from licensees?

22 A The only thing that we may purchase from

23 a licensee that we can think of would be some

24 material we would need for our showroom in

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Page: 61

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Las Vegas.

2 Q To your knowledge, has Restonic ever

3 purchased beds for use in the flame retardant

4 tests that were being conducted in the State of

5 Illinois?

6 A We've purchased -- the mattresses we

7 purchased for fire retardancy qualification

8 came from different licensees based upon when

9 the testing was being performed.

10 Q Was any test conducted here in the State

11 of Illinois?

12 A Yes.

13 Q Who did Restonic purchase the bedding

14 from for the tests that were being conducted in

15 the State of Illinois?

16 A I believe it was from New Albany.

17 Q To your knowledge, has Continental

18 Silverline or Drew Robins ever sold bedding to

19 Restonic here in Illinois to be used for fire

20 retardant tests in the state?

21 A No.

22 Q To your knowledge, has Tom Comer's

23 businesses ever sold to you products to be used

24 for fire retardant tests here in the State of

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Page: 62

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Illinois?

2 A No.

3 Q How about Richard Stevens, same question?

4 A No.

5 Q How about for any other purpose besides

6 fire retardant tests, has Restonic ever

7 purchased any products from either of those

8 three licensees for the purposes of use somehow

9 in the State of Illinois?

10 A State of Illinois, no.

11 Q How about elsewhere?

12 A Yes.

13 Q In what context has Restonic purchased

14 products from either Mr. Comer's businesses,

15 Mr. Stevens' business or Mr. Robins' business?

16 A Only Mr. Robins of the three.

17 Q Tell me about the purchase Restonic

18 made --

19 A It was for samples for the showroom in

20 Las Vegas.

21 Q Were those products shipped directly to

22 Las Vegas, or were they shipped to Illinois

23 first?

24 A Directly to Las Vegas.

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Page: 63

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 Q Now, does Restonic Corporation have a

2 customer service 1 (800) number?

3 A I believe we do, yes.

4 Q What is the purpose customer -- is it an

5 active 1 (800) number where customers call up

6 and ask questions?

7 A Restonic has an (800) number that is

8 answered by our office. And people can call up

9 and ask any question.

10 Q Do people call up and ask where we can

11 find Restonic mattresses in my particular

12 state?

13 A Not that I'm aware of. If they do, we

14 direct them to the website because on the

15 website there's a locator where you type in the

16 zip code. And it lists the retailers in that

17 region if the licensee has updated the list.

18 Q Now, this 1 (800) number, do you also

19 accept complaints or accommodations from

20 customers dealing with specific licensees?

21 A Calls come in from time to time. I'm not

22 sure if it's just an (800) number. It could be

23 on the regular number as well. We do receive

24 calls from time to time.

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Page: 64

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 MR. SALKOWSKI: Sir, I have no further
2 questions. For the purposes of the record, the
3 deposition was limited to issues surrounding
4 jurisdiction. And that I reserve the right to
5 call you on the substantive matters if need be.

6 MR. MENDELSON: Anybody else?

7 MR. LYMAN: I have a question.

8 EXAMINATION

9 BY MR. LYMAN:

10 Q Do you know that Sleep Alliance meeting
11 that I think you facilitated?

12 A Yes.

13 Q Was that in conjunction with some other
14 meetings that were taking place at the same
15 time like other Restonic meetings, if you know?

16 A Well, that I recall now as we went
17 through this process, it was the afternoon of
18 and the morning after that this product
19 marketing committee meeting we were having here
20 in Chicago.

21 Q So, in other words, there were Restonic
22 meetings that proceeded first?

23 A Correct.

24 Q I think you already told us that the

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Page: 65

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 reason all these people met for the Sleep
2 Alliance is because it was a convenient
3 location being in Chicago, correct?

4 A Correct.

5 Q So now it's even more convenient because
6 everybody was already there because of
7 Restonic -- a Restonic meeting that had taken
8 place before the Sleep Alliance meeting,
9 correct?

10 A Not everybody. But most of them,
11 correct.

12 MR. LYMAN: That's all I have.

13 EXAMINATION

14 BY MR. GAUSTAD:

15 Q Mr. Russo, you had mentioned Ken Akers on
16 a number of occasions. As I understand, it's
17 your understanding or you believe Mr. Akers is
18 an employee of the Stevens group, is that
19 right? Do you know?

20 A I believe he works for Stevens Mattress
21 Company. One of the two, if not both.

22 Q So when he was in attendance at these
23 meetings, was he there on behalf of the entity
24 or Mr. Stevens in an individual capacity?

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Page: 66

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 MR. SALKOWSKI: Objection. Lack of
2 foundation.

4 BY MR. GAUSTAD:

5 Q Do you know if Mr. Akers -- what capacity
6 Mr. Akers was there as an employee for the
7 corporation or these entities?

8 A When he attends the product marketing
9 committee meetings, he, like the other members
10 of the product marketing committee, are coming
11 in as employees of their respective licensees.

12 MR. GAUSTAD: Thank you.

13 MR. SALKOWSKI: That's it. Thank you.

14 MR. MENDELSON: Reserve.

15 (AND FURTHER DEPONENT SAITH NOT)

2

23

24

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Page: 67

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 ROYAL SLEEP
5 PRODUCTS, INC.,

6 Plaintiff,

7 vs.

No. 07 C 5588

8 RESTONE CORPORATION,
9 an Illinois
10 Corporation, et al.,

11 Defendants.

12 I, STEPHEN RUSSO, state that I have read
13 the foregoing transcript given by me at my
14 deposition on the 14th day of July, 2008, and
15 that said transcript constitutes a true and
16 correct record of the testimony given by me
17 at said deposition except as I have so
18 indicated on the errata sheets provided
19 herein.

20 STEPHEN RUSSO

21 No corrections (Please initial) _____
22 Number of errata sheets submitted _____ (pgs.)

23 SUBSCRIBED AND SWORN to
24 before me this _____ day
of _____, 2008.

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Page: 68

Deposition of Stephen Russin

Royal Sleep Products, Inc. vs. Restonic Corporation

1 STATE OF ILLINOIS)
 2 COUNTY OF COOK) SS.

3
 4 I, Laura E. Locascio, Certified
 5 Shorthand Reporter and Notary Public, in and
 6 for the County of Cook, State of Illinois, do
 7 hereby certify that previous to the
 8 commencement of the examination, said witness
 9 was duly sworn by me to testify the truth;
 10 that the said deposition was taken at the
 11 time and place aforesaid; that the
 12 testimony given by said witness was reduced
 13 to writing by means of shorthand and
 14 thereafter transcribed into typewritten form;
 15 and that the foregoing is a true, correct,
 16 and complete transcript of my shorthand notes
 17 so taken as aforesaid.

18 I further certify that there were
 19 present at the taking of the said deposition
 20 the persons and parties as indicated on the
 21 appearance page made a part of this
 22 deposition.
 23
 24

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Page: 69

Deposition of Stephen Russin

Royal Sleep Products, Inc. vs. Restonic Corporation

1 I further certify that I am not
 2 counsel for nor in any way related to any of
 3 the parties to this suit, nor am I in any way
 4 interested in the outcome thereof.

5 I further certify that this
 6 certificate applies to the original signed IN
 7 BLUE and certified transcripts only. I
 8 assume no responsibility for the accuracy of
 9 any reproduced copies not made under my
 10 control or direction.

11 IN TESTIMONY WHEREOF I have
 12 hereunto set my hand and affixed my notarial
 13 seal this day of , A.D., 2008.

14
 15
 16 Laura Locascio, CSR, RPR

17
 18 My Commission Expires
 19 October 16, 2011
 20
 21
 22
 23
 24

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Page: 70

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

<u>WORD INDEX</u>	< 4 >	actively 44:10, 15	annual 30:17, 18
< 0 >	40 1:22 4th 32:19, 20 34:21 35:16	60:23 add 41:4 addition 21:6 23:24 26:18, 20 27:11 31:17 32:10 34:17, 24 35:21 39:7 41:12 42:10 46:24 51:7 56:18 61:16	31:18, 21 answer 40:2 43:23 58:16 answered 64:8 anybody 59:3 65:6 Apollo 6:19 16:9, 17, 21, 24 17:1, 5 appearance 69:21 APPEARANCES
06 11:13 12:4 22:7 43:15 07 19:2, 13 22:2, 4 31:18 32:10 51:8 52:16 53:14 54:3 68:6 08 34:22 44:12, 13	< 5 > 5151 4:8 5418 2:9 58237 3:18	Additionally 8:5 address 6:15, 17, 18, 21, 23, 24 adjacent 35:11 advisory 39:9, 11, 12, 13, 15 40:16, 23 41:1, 7, 13 affixed 70:12 aforesaid 69:11, 17 afternoon 6:8 65:17	2:1 3:1 4:1 Appearing 3:20 4:9 applies 70:6 approach 39:21 appropriate 40:3 approved 38:24 approximately 8:16 9:7 10:12 12:23, 24 19:4 43:1, 10, 15 44:5, 8 52:15 area 16:1
< 1 > 1 1:22 64:2, 5, 18 100 2:6 10007 6:19 102 7:2 1301 4:6 14th 1:23 68:12 15 10:12 150 3:5 1540 7:2 17 59:21	< 6 > 6 5:4 60601 3:7 60611 2:17 645 3:17 65 5:5 651 4:8 6588 68:6 66 5:6	agenda 16:14, 16 agents 57:1 agreement 49:22, 22 agreements 13:20 14:9 15:2 ahead 40:8	asked 14:22 15:21 16:3 26:23 28:7 58:5, 12 59:3, 15 60:5 asking 40:2, 4 49:19
< 2 > 2006 8:15, 16, 21 23:13 31:9 41:3 2007 9:16 15:18 43:1 51:20 52:11 59:21 2008 1:23 32:20 35:16 50:19 60:13 68:12, 23 70:13 2200 2:16 27th 2:7 29th 22:1, 2 2nd 2:6	< 7 > 7004 2:18 701 3:19 713 4:8 77010 4:7 < 8 > 800 64:2, 5, 7, 18, 22 840 2:18 894 3:8	Air 10:2, 3, 5, 10 airport 33:4 54:3, 8 Akers 17:19 18:16, 17 34:2 37:1 42:18 45:18 46:1, 12, 13 54:19 55:8, 9 66:15, 17 67:5, 6 al 68:8 Albany 23:9 42:20 45:14, 17 62:16	aspect 49:23 assisted 50:15, 24 Associates 52:13, 22 assume 60:20 70:8 attend 30:8 34:12, 14 53:4, 6 55:18 attendance 17:12 31:10, 14, 15 52:4 66:22
< 3 > 305 2:9 30th 22:1, 2 312 2:18 3:8 3241 3:8 3262 3:19 330 1:21 2:15 3300 3:6 33131 2:8 352 3:19 374 2:9	< A > A.D 1:23 70:13 able 19:10 37:16 41:8 54:9 Absolutely 35:6 accept 58:13 64:19 accommodations 64:19 account 37:5, 9, 12, 20 38:8, 9, 13, 14, 16, 17, 19, 22 39:5 accounts 38:3, 4, 5 39:4, 6 accuracy 70:8 achieve 16:15 action 6:11 20:4 active 38:6 40:17, 23 64:5	Alliance 3:10 14:13, 15, 16, 19, 23 15:8, 11, 22 16:19, 21 19:1, 5, 14 20:24 42:17 50:16, 24 51:2, 8, 10, 14 53:3 58:6, 8, 11, 14 60:2, 7 65:10 66:2, 8 allow 56:7 America 2:5 AMUNDSEN 3:3 ANDREW 4:5	attended 26:12 32:16 33:8, 11 46:2, 5, 14, 20 53:2 attends 67:8 attorney 6:10 40:1, 6 autonomy 14:8 Avenue 1:21 2:15 3:5, 17 aware 14:16 19:13 30:7 32:7 46:19 49:7 56:22 57:3, 7,

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

22, 24 58:4 61:19 64:13	41:1, 4, 5, 7, 13 47:6 59:20	capacity 11:14 18:9, 18 66:24 67:5	24 52:7 53:5, 5 54:23 60:7, 11
< B >	boards 21:11, 21 22:5, 9 23:21 26:8	Carlene 12:19	Comer's 12:8
back 40:15 51:6 59:5, 8	Bob 42:19 55:14	central 19:10 31:24	18:10, 13 20:7
background 19:18	Boulevard 6:19	certificate 70:6	62:22 63:14
Bank 2:5	brand 8:2 13:15 52:12 53:16, 23 61:10	Certified 1:19 69:4 70:7	coming 29:20 67:10
based 23:8 62:8	break 28:13, 15 50:23, 23 51:5 59:5, 7 60:5	certify 69:7, 18 70:1, 5	commencement 69:8
basis 27:1, 10, 16	Brent 17:20 18:20 33:12 36:11 42:20 45:18 46:19 52:3, 21 54:14, 15, 21	chair 44:21	commencing 1:22
Beach 6:20	briefly 7:20 19:17	chairman 29:15	Commission 70:18
becoming 11:4, 24 38:17 44:16	bringing 34:24	change 45:16	committee 41:15, 18 42:3, 4, 5, 9, 23 43:2, 7, 12, 16, 20, 21 44:2, 2, 3, 10, 14, 22 45:9 46:5, 14, 21 47:8, 9, 10, 20, 22, 23 48:3, 5, 7, 11, 13, 15 49:6, 11 51:19, 23 53:9, 21 55:11, 15 65:19 67:9, 10
Bedding 3:11 17:7 18:11 20:9 62:13, 18	BRITO 2:3	changed 25:16 41:3, 24 45:1, 5	committees 42:2 43:20 44:15 45:5, 13, 19 47:1, 2, 4 55:17 56:3, 12
beds 62:3	brought 6:11 28:4	charts 42:6	companies 16:6 20:7 25:10, 14 53:22
beginning 28:4	Buffalo 3:11 24:5, 8, 11, 21, 24	Chicago 1:22 2:17 3:7 7:10 16:1, 1 17:11 19:6, 13 32:15 33:4 49:1 50:9, 11 65:20 66:3	Company 3:11 9:3, 23 13:2, 18 14:18, 20 16:8 20:21 26:5 32:24 45:10 50:18 52:12 60:12 66:21
begins 60:2	BURKE 2:12	chief 23:4	complaints 64:19
behalf 2:10, 19 3:9, 21 4:10 15:7 17:6 18:12 53:2 54:12 55:6, 13 56:11 57:8, 16, 20 58:2, 5, 11, 23 66:23	business 6:21, 23 7:5 9:18, 20, 21 10:15 12:6, 8 14:8 15:13 27:15, 21, 21 29:2 49:24 58:8, 14 63:15, 15	Chris 42:14	complete 69:16
believe 18:3, 9 20:7, 8, 10, 17, 20, 23 21:3 24:19 26:17 32:3, 6, 9 33:13, 14, 20 37:11 39:20 48:18, 22 52:2 53:4 54:15, 24 62:16 64:3 66:17, 20	businesses 18:10, 14 62:23 63:14	CHRISTENSEN 3:15	comprised 41:6
beyond 50:19 60:12	Butler 22:23 23:1 30:2	Civil 1:16	concern 39:21
bit 14:2	bylaws 39:10 41:2	CLAPP 3:15	concerns 48:16 49:22 50:3
Blinds 18:13	< C >	clarification 40:9	conduct 34:18 35:2
BLUE 70:7	call 8:3 49:15, 15 64:5, 8, 10 65:5	clarity 29:20 35:5 43:19	conducted 11:19 19:15 23:16 25:1 27:12 43:5, 11 62:4, 10, 14
board 10:22 21:7, 8, 10, 16, 23 22:7, 11, 15, 17, 20 23:11, 12, 14 24:18 25:1, 9, 13, 22 26:4, 10, 13, 18, 20, 24 27:8, 12, 14, 19, 19, 23, 24 28:23 29:1, 11, 12, 15, 20 30:4 38:23 39:9, 11, 12, 13, 17 40:16, 17, 19, 23	called 1:13 6:3 16:9 39:8 41:14, 17 47:9 50:13 52:13, 14 53:20	clear 29:14 55:10	confuses 38:24
	calls 49:18 64:21, 24	client 40:1, 6	conjunction 65:13
	candidates 50:17 59:16 60:11, 19	Club 53:15 54:4	consolidation
	Cantor 22:22, 24 24:13, 14, 17, 19, 19 29:15 30:1	code 64:16	
		collaborate 47:13 48:9	
		collection 47:12 48:8	
		collectively 36:3	
		combined 45:12	
		come 19:11 31:24 35:8 36:5 50:5, 9, 11, 12, 14 64:21	
		Comer 3:13 11:3, 12, 15, 22 12:3, 7 15:23 16:4 17:17 18:6 20:6 21:19, 20 22:4, 8, 19 23:13 24:12, 13, 15 30:5, 8 32:1 33:17, 18, 22 36:15 50:15,	

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

<p>50:17 59:2 constitutes 68:13 consultant 9:1 10:21 contact 27:14, 18 28:22, 24 29:8 60:6 CONT'D 3:1 4:1 context 63:13 Continental 4:11 20:18 53:15 54:4 62:17 continuations 54:1 contractual 14:24 control 70:10 convene 34:13 convenient 66:2, 5 conversation 58:20 conversations 29:9 58:10 Cook 1:20 69:2, 6 copies 70:9 Corp 8:9 corporate 24:8 26:7 Corporation 2:20, 21 6:13 7:11, 12, 15, 18, 22, 24 8:1, 5, 18, 19 9:1, 2 11:7, 8, 19 12:1 13:14, 24, 24 19:19, 20 21:8, 9, 13, 14, 17, 18, 23 22:7, 12, 13, 18, 21 23:2, 5, 19, 21, 23 26:7 27:2, 3, 8 30:20, 24 37:3, 4, 22 39:11 41:3, 11 57:14, 15 58:2 59:20 61:4, 5 64:1 67:7 68:7, 8 corporations 7:21 8:13, 23 22:9, 16 27:13 Corporation's 14:4 correct 7:16 8:11 9:13 12:13 14:9 16:2 18:23 19:21 21:7 22:3 30:15 33:7 35:17 43:18 56:8, 14 65:23</p>	<p>66:3, 4, 9, 11 68:14 69:15 corrections 68:20 correspondence 37:19 cost 55:21 counsel 70:2 County 1:20 69:2, 6 course 56:9 59:24 COURT 1:1 68:1 Courts 1:17 current 10:14 42:11 57:10 Currently 19:23 40:17 41:17 customer 10:19 64:2, 4 customers 9:20 10:15, 16, 20 16:24 17:6 64:5, 20 < D > Dakota 3:18 Dan 29:15, 17 30:1 DANIEL 3:16 22:22 Darryl 22:23 30:2 David 42:13 day 1:23 19:3, 4 23:13 54:10 68:12 70:13 days 19:3 dealing 36:17 49:21 59:16 64:20 December 22:1, 2, 4, 7 23:13 31:9, 18 32:10 41:3 decide 31:20 56:6 decision 56:1, 6 defendant 18:6 Defendants 2:19 3:9, 21 4:10 68:9 definition 50:2 DEPONENT 67:15 deposition 1:13 5:12 11:6 65:3 68:12, 15 69:10, 19, 22 depositions 1:18</p>	<p>describe 7:20 13:12 16:11 57:12 described 39:8 designated 38:9, 14 desired 29:16 determine 53:22 58:6 develop 50:17 60:11 developed 59:16 develops 61:12 different 14:1, 2, 3, 10 18:4 33:6 53:22 62:8 direct 16:14 64:14 directing 44:14 direction 32:24 50:1 70:10 directly 8:6 10:18 56:24 61:3, 17 63:21, 24 director 21:16, 18, 20 22:12, 20 23:3 24:20 29:13 30:7, 10, 11 directors 10:22 21:7, 9, 10, 11, 13, 14, 17 23:11, 12, 14 24:7, 11, 18 25:1, 9, 22 26:8, 11, 13, 19, 21, 24 27:9, 12, 15, 19, 20 28:23 29:1, 3, 4, 11 30:2 39:17 41:7 47:6 59:20 discuss 27:15, 20 28:24 36:16 48:9, 12, 16 50:6 52:12 53:16 discussion 30:3 discussions 29:11, 19 30:1 DISTRICT 1:1, 17 68:1 Divareto 52:13, 22 DIVISION 1:2 68:2 document 37:10, 18 38:21 50:22 51:5 59:10, 24 60:4 documents 47:15 59:10</p>	<p>doing 28:17 29:18 57:15 domestic 13:21 Donna 44:19 Double 33:2 34:23 51:21 52:1 Drew 4:12 11:3 18:21 20:18 33:10 36:8 53:7 55:1 58:1 62:18 duly 6:4 69:9 Dundee 7:2 < E > earlier 6:8 51:22 East 7:2 EASTERN 1:2 68:2 EINHORN 2:3 either 8:22 12:3, 7 20:10, 15 22:15, 24 25:2 27:13 35:13 47:6 56:24 58:14 59:11 60:6 63:7, 14 elected 19:6 21:23 24:7 eliminated 41:2 employ 13:2 employed 57:13 58:1 employee 9:10, 14 27:7 33:12 36:11 37:1 42:13, 15, 17, 18, 19, 21 45:11 55:18 56:7 57:7, 10, 11, 19 58:1 66:18 67:6 employees 51:1, 2 56:2, 5, 14 57:1, 3 67:11 engagements 17:4 ensure 16:15 41:9 entities 67:7 entity 66:23 Epperson 17:23 equity 16:17 errata 68:16 estimate 28:16, 18, 19 et 68:8</p>
--	--	--	---

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

Evanson 12:19
 everybody 66:6, 10
 exact 48:1 58:16
 exactly 9:6, 15
 12:22 15:16 37:23
 46:18, 23 52:6
 examination 1:14
 6:6 65:8 66:13
 69:8
 examined 6:4
 exchanged 10:1
 executive 23:4
 24:20
 EXHIBIT 5:12
 exhibits 5:14
 existed 41:7
 existence 37:14
 38:19 41:19
 expense 24:10
 expenses 55:21, 24
 Expires 70:18
 expressed 50:3

< F >

Fabia 44:19
 facilitate 15:21
 16:4, 10 59:2
 facilitated 15:10
 51:9, 15 65:11
 facilitates 16:7
 facilitating 17:6
 facilitation 16:22
 17:2
 facilities 50:10
 58:3
 fact 33:16
 Falls 42:15
 familiar 15:19 28:7
 37:6 50:20
 fashion 47:12
 Federal 1:15
 Federation 24:20
 fee 61:11
 fellow 13:9 17:18,
 19 45:7 55:13
 fifteen 59:6
 figure 38:1
 fill 11:19
 filled 60:21

financial 39:18, 21
 41:9
 find 34:5 37:16
 64:11
 fine 11:11
 finish 28:14
 fire 47:17 62:7, 19,
 24 63:6
 firm 17:22 18:1
 first 6:3 9:17
 15:20 17:23 23:19
 25:19 26:1 29:14
 31:6 35:8 44:10,
 12, 13 50:19 54:22
 60:12 63:23 65:22
 five 9:7 59:5
 flame 62:3
 Floor 2:7
 Florida 2:8 6:20
 7:5 10:2, 7, 8
 flow 42:6
 foam 9:22 10:15
 12:9
 follow 49:9
 follows 6:5
 Ford 17:20 18:20
 33:12, 13 36:11
 42:20 45:18 46:2,
 19, 20 52:3, 21
 54:14, 21
 foregoing 68:11
 69:15
 foreign 14:7
 form 69:14
 formally 50:13
 formerly 57:11
 forum 48:2
 found 37:18 38:8,
 13
 foundation 67:2
 four 9:7 43:14
 franchise 49:21
 franchisee 10:11
 franchisees 37:21
 FREDERIC 2:13
 frequent 27:16
 Friday 59:11
 FRIEDBERG 4:5
 friendly 24:14

friends 12:3
 FULBRIGHT 4:4
 further 65:1 67:15
 69:18 70:1, 5

< G >

Gary 20:21 58:7, 11
 GAUSTAD 3:16
 5:6 66:14 67:4, 12
 general 20:1
 generally 13:12
 29:10 34:11 39:22
 53:18
 getting 51:3
 give 15:1
 given 68:11, 14
 69:12
 giving 28:17
 go 23:18 28:3, 15
 31:15 40:7 47:3
 54:13 56:20
 going 28:10 40:5
 56:7, 20 59:9, 13,
 17 60:1, 10
 Good 6:8 23:18
 39:20
 Grafton 3:18
 greater 26:4
 group 10:6 11:16
 23:8, 17 30:19, 20
 31:7 32:23 39:22
 41:15 42:17, 19, 20
 45:14 56:17 66:18
 groups 18:19
 guess 28:18, 20
 43:4
 guys 47:17 59:14

< H >

half 25:12 54:10
 hand 70:12
 happen 28:9
 happened 45:6
 hard 51:3
 head 28:10
 headquartered 10:8
 held 19:2 30:1
 31:1, 3 32:22 33:1
 48:24 51:11 54:2,

8 56:22
 help 56:15
 helping 56:12, 13
 helps 56:16
 hereunto 70:12
 Hill 3:17
 hold 19:6 34:7, 15
 holding 14:20
 holdings 41:10
 holds 41:16 47:5
 home 6:16, 18 7:6,
 7
 Hotel 15:18, 24
 17:11 33:2 34:23
 49:2 52:11
 Houston 4:7 42:21
 58:3

< I >

IBM 2:14
 Idaho 42:16
 identified 11:23
 identify 60:18
 identities 11:9
 Ill 3:4
 Illinois 1:9, 21, 22
 2:17 3:7 7:3, 9
 19:15 24:9 30:8
 33:3 35:2, 9, 23
 36:5, 13, 16, 23
 43:6, 12, 17 45:24
 46:6, 15, 22 48:11,
 16 50:6 51:11
 56:22 61:14 62:5,
 11, 15, 19 63:1, 9,
 10, 22 69:1, 6
 includes 20:9
 including 41:13
 inconvenient 31:23
 Indiana 23:9
 indicated 7:14
 10:13 49:4 68:16
 69:20
 indicating 37:19
 individual 11:23
 29:3, 4 34:4 56:10
 57:13 66:24
 Individually 36:3, 4,
 7 51:1
 industry 17:7, 8, 9

information 19:18
29:21 47:16
initial 68:20
initiated 58:20
input 48:6
instance 46:13
instructions 28:3
intellectual 7:23
8:6, 8
intent 37:11
interest 16:18, 19
23:1
interested 11:24
58:7 70:4
interface 10:18
interim 9:3, 4, 12
10:23 11:4, 24
12:11 26:1
International 9:22
10:4 13:22 14:5
internationally 8:7
interviewing 53:21
introduce 10:20
59:13
investment 18:1
invited 35:20 52:24
involve 30:5 35:19
involved 14:6 44:9,
16, 20
involves 29:24
Isles 6:19
issues 50:6 65:3
its 13:16, 21 17:6
19:6 47:6, 6, 7
58:15

< J >

Jackson 3:12 20:9
JAWORSKI 4:4
Jewish 24:20
Jim 40:20
John 40:19
joined 25:19
July 1:23 68:12
June 32:19, 20
34:21 35:7, 16
jurisdiction 65:4

< K >

Ken 17:19 18:16,
17 34:2 37:1
42:18 46:12 54:19,
20 55:9, 11 66:15
Kentucky 31:7
Kevin 13:10
kind 28:1 50:4
knew 9:18 10:18
know 9:8 11:12, 16,
18, 21, 22 12:15, 20,
23 13:5, 6, 7 14:15
15:15 16:3 18:7,
12, 15, 16 19:1, 5,
23 20:1, 2, 5, 14, 19,
22, 24 22:8, 10
23:10 24:7, 14, 16,
17 25:6, 8 28:11
31:8, 13 32:1, 4
33:8 34:4 36:7, 11
38:16 44:7, 9 46:8,
10, 17 48:1, 6, 20
49:2, 8 52:3, 21
53:1, 5 54:11, 13
56:4 57:2 65:10,
15 66:19 67:5
knowledge 18:20
22:11 37:8, 15
38:18 39:3 40:21
42:9 44:23 48:10,
14 51:10, 12 62:2,
17, 22
known 37:4

< L >

L.P. 4:12
Lack 67:1
lady 44:17
Las 34:13, 15
35:11, 15, 15 62:1
63:20, 22, 24
lasted 19:2
late 8:14
Latex 9:22, 22
10:4, 15
Laura 1:18 18:7
33:19 69:4
Laurie 17:17 36:19
42:16 53:1, 4
54:16, 17
lawsuit 18:6 26:6

leadership 50:18
60:12
League 24:21
learn 9:17
Lee 22:22
left 10:3 13:2, 2
level 30:4
license 11:16 15:2
36:17 42:14, 16
49:22
licensee 10:5
27:22 30:4 33:5
34:7, 9, 17, 19 35:9,
14, 17, 21 39:19, 22
41:4 45:17, 17
49:16 55:18, 18
56:4, 11, 13 57:5, 9,
11, 20, 21 61:23
64:17
licensees 6:12 8:3,
7 9:20 10:14, 16
13:16, 21 14:5, 7,
21 15:1 26:23
29:24 30:6 31:24
32:15, 22 34:12
35:1, 3, 8, 19, 19, 23
36:2 37:21, 23
39:14 41:8 47:7,
13 48:8, 23 49:14,
18 50:4, 8, 10
54:12 56:16, 17, 23
57:17 58:15 59:3
61:3, 13, 17, 21
62:8 63:8 64:20
67:11
licensee's 56:2, 6
licenses 7:23 8:6, 9
licensing 14:9
18:19 61:11
limited 17:6 65:3
line 28:14
list 64:17
lists 64:16
litany 56:20
little 59:4
live 24:11
LLC 3:3, 10, 12
LLP 4:4
Locascio 1:18 69:4
locating 51:1

location 19:10
31:24 66:3
locator 64:15
log 31:16
long 8:12 9:4
10:10 12:20, 23
19:1 21:20 23:10
28:19, 20
longer 45:10
look 31:15 59:23
looking 60:23
losing 57:18
Louisville 31:7, 17
LYMAN 3:4 5:5
65:7, 9 66:12

< M >

maintain 7:4
managed 9:19
management 8:2
13:15 61:10
managerial 16:6
Mann 17:23
manner 19:18
manufacturers 8:3
Manufacturing 3:22
47:9, 14, 21, 22, 23
48:3, 7, 13, 15, 16
49:6, 11
marked 5:14 59:18
market 34:13 35:11
marketing 8:2
13:15 18:10, 18, 22
33:21 39:17, 21
41:9, 14, 15, 18, 22,
23 42:1, 5, 9, 22
43:7, 12, 16, 20
44:1, 3, 18 45:7, 9
46:5, 14, 21 47:21
48:5, 6, 10 51:18,
19, 23 53:9, 21
55:11, 15, 17 56:12
61:9, 12, 16 65:19
67:8, 10
material 61:24
materials 61:12, 16
matter 29:24 33:16
38:2, 6
matters 30:4 36:16
39:18 65:5

<p>Mattress 2:21 3:12, 22 6:13 7:11, 15, 24 8:1, 9, 18 9:1, 2 11:7 13:24 19:20 20:10, 16 21:9, 14, 18 22:6, 13, 17, 21 23:1, 5, 23 26:7 27:2, 7 30:21, 24 37:4 39:10 41:2, 11 57:14 59:20 61:4 66:20</p> <p>mattresses 62:6 64:11</p> <p>McKAY 2:12</p> <p>McKenny 40:20</p> <p>McKinney 4:6</p> <p>mean 10:17 11:6 36:6 44:24 48:13 49:20 57:10</p> <p>Meaning 14:7</p> <p>means 16:11, 12 69:13</p> <p>meet 25:9, 23, 24 35:23 36:2 42:23 43:2 48:11</p> <p>meeting 15:10, 12, 13, 21 16:4, 10, 13, 14, 22 17:10, 13 19:2, 6, 9, 12, 14 22:1 24:2, 4, 5, 8, 24 25:22 26:15 29:16, 18, 21 31:6, 6, 11, 14, 18, 19, 21, 21, 22 32:2, 5, 8, 11, 12, 14, 21, 22 33:1, 5, 6, 9, 11 34:7, 10, 15, 17, 21, 22 35:7, 15, 16, 18 41:12, 13 46:21 48:24 49:9 50:13 51:8, 15, 19, 24 52:4, 10, 14, 18, 22 53:2, 6, 8, 10, 13, 19, 20 54:2, 2, 6, 8, 12, 14, 15, 18, 20, 23, 24 55:1, 4, 5, 7, 11, 14 56:5 59:19 65:10, 19 66:7, 8</p> <p>meetings 16:7 17:2, 7 22:12, 14 23:15, 15, 20, 24</p>	<p>24:1 25:1 26:12, 13, 19, 22, 24 27:4, 9, 12, 20 28:24 29:13, 22 30:7, 10, 11, 15, 17, 19, 24 34:19 35:3, 9, 13, 14, 17, 21 39:7 41:16 43:5, 11 45:23 46:24 47:3, 5 48:18, 21 49:6 51:10 54:5, 10 55:19, 22 56:19, 21 60:9 65:14, 15, 22 66:23 67:9</p> <p>meets 43:3</p> <p>meld 28:2</p> <p>member 22:15, 17 29:20 31:3 55:12, 20</p> <p>members 40:19 41:4 42:8, 12 43:6, 13 67:9</p> <p>membership 42:12 45:1 48:2</p> <p>MENDELSON 2:13 40:9 59:11 65:6 67:14</p> <p>mentioned 66:15</p> <p>met 6:8 11:15 25:14 43:13, 16, 21, 22 44:4 48:15 66:1</p> <p>Miami 2:8 45:8, 16</p> <p>Michigan 3:5</p> <p>minute 59:5</p> <p>minutes 26:8, 11 59:6, 19</p> <p>misstating 49:5</p> <p>month 8:24</p> <p>months 9:7 10:12</p> <p>morning 65:18</p> <p>< N ></p> <p>name 6:9, 14 13:9 16:8 17:19, 19 34:4 41:24 55:13</p> <p>named 44:19</p> <p>names 17:24 20:3, 12 33:9 54:13</p>	<p>national 37:5, 9, 12, 20 38:3, 5, 9, 14, 17, 18, 21 39:4, 5, 6</p> <p>nature 15:12 29:10 32:20 47:10 61:7</p> <p>need 11:8 25:23, 24 28:13 29:14, 21 41:1 55:10 61:24 65:5</p> <p>needed 34:11 42:24</p> <p>network 8:3</p> <p>never 38:5</p> <p>New 23:8 24:6, 8, 11, 24 26:3 42:20 45:14, 17 62:16</p> <p>nominated 22:8</p> <p>North 1:21 2:15 3:5, 18</p> <p>Notary 1:19 69:5</p> <p>notes 69:16</p> <p>notice 1:15</p> <p>notorial 70:12</p> <p>November 8:14, 16, 21 11:13 12:4 43:15 53:11</p> <p>number 8:7 18:3 25:15 46:20 64:2, 5, 7, 18, 22, 23 66:16</p> <p>< O ></p> <p>Objection 67:1</p> <p>obtain 49:15</p> <p>obviously 12:12</p> <p>occasion 22:14 35:22 44:4</p> <p>occasions 49:14 66:16</p> <p>occurred 17:10 19:12 51:20 57:22</p> <p>occurs 35:12</p> <p>October 15:17 19:2, 13 51:7 52:11, 15, 16, 20 59:21</p> <p>office 7:1, 6, 8 28:20 64:8</p> <p>officer 23:4</p> <p>offices 7:4, 9</p>	<p>O'Hare 34:23 51:20 52:1 53:15 54:3</p> <p>once 11:15 28:9 50:7</p> <p>ongoing 17:3</p> <p>open 48:2</p> <p>operate 13:19</p> <p>operated 14:8 49:24</p> <p>operates 48:3</p> <p>operating 9:2</p> <p>operational 37:17</p> <p>operative 38:2 48:4</p> <p>opposed 19:7 24:9 31:21</p> <p>order 53:22 54:8</p> <p>Oregon 42:14</p> <p>original 70:6</p> <p>outcome 70:4</p> <p>outside 15:8 27:19 28:23 29:12, 23 30:2 41:6</p> <p>oversight 26:4 41:9, 10</p> <p>owner 7:22</p> <p>ownership 16:18</p> <p>< P ></p> <p>p.m 1:22</p> <p>PAGE 5:2, 12 69:21</p> <p>paid 57:21</p> <p>Palatine 7:3, 8</p> <p>papers 10:1</p> <p>paperwork 38:12</p> <p>paragraph 60:2</p> <p>Parker 40:20</p> <p>part 69:21</p> <p>participants 17:14, 15 26:14</p> <p>participate 26:23 27:4, 8 35:4 49:10 55:19 56:8</p> <p>participated 23:21 32:1, 4, 8, 15 37:22 48:20, 23 52:21 54:11 56:24</p> <p>participates 56:10</p> <p>participating 26:21</p>
--	--	---	---

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

<p> participation 55:22 particular 64:11 parties 19:10 69:20 70:3 pattern 34:8, 9 pay 16:21, 21 17:1 61:10 payments 58:13 pays 55:21 PC 2:12 PEARSON 3:15 people 21:12 45:13 54:9 64:8, 10 66:1 performed 15:7 62:9 performs 17:5 period 43:8 person 12:15 18:7 23:15 24:1, 2, 4, 5 25:2, 4 26:15 27:13 30:9 31:22 34:22 35:10 43:17 46:2, 21 50:5 personally 21:4 46:6, 13 persons 69:20 pertaining 1:17 peruses 60:4 Peterson 12:19, 20 13:1, 7 Phone 2:9, 18 3:8, 19 4:8 23:22 27:14 place 35:14 45:24 53:10, 14 65:14 66:8 69:11 Plaintiff 1:14 2:10 6:10 68:5 planning 15:13 19:8 41:14, 15 51:19 Plaza 2:14 please 6:14, 18 68:20 point 21:22 37:19 portion 60:8 position 10:21 11:20 60:20 positioning 52:12 </p>	<p> 53:24 possibly 39:16 practice 16:6 prepared 29:22 present 17:17, 18 32:23 69:19 president 6:22 7:15, 17 8:12 9:3, 5, 11, 12 10:23 11:4, 15, 20, 24 12:11, 13, 21 13:8, 11, 17 14:11 15:3, 8 24:23 25:13 26:2, 2, 3, 4 36:1, 9, 13 37:14 38:6, 10, 15 39:2, 16, 20 41:6, 20 43:8 44:6, 18 45:2 46:1 48:19 49:13 50:8 51:17 56:3 60:19, 24 President's 53:15 54:4 pretty 25:14 28:17 48:2 previous 12:12 69:7 previously 42:2 principals 16:13 Prior 8:16, 21, 24 9:18 11:4, 13, 17 13:7 22:4 26:9 38:15 41:5 44:15 privilege 40:2, 6 problem 59:15 Procedure 1:16 proceeded 65:22 process 16:15 65:17 produced 26:7 59:11 product 41:17, 22, 23 42:1, 4, 8, 22 43:7, 12, 16, 21 44:2, 2 46:5, 14, 21 47:21 48:5 51:19, 23 53:8, 20 55:11, 15, 16 56:11 65:18 67:8, 10 </p>	<p> PRODUCTS 1:5 4:12 12:9 61:7, 11 62:23 63:7, 14, 21 68:4 program 37:4, 5, 9, 12, 20 38:15, 19, 22 39:5 47:17 48:7 53:24 60:3 programs 47:14 promoted 9:9 property 7:23 8:6, 8 proposal 53:16 proposed 38:4 protected 40:6 provide 7:24 14:22 35:5 39:11, 14 51:13 provided 13:19 29:22 68:16 provides 8:1 13:14 Public 1:20 69:5 purchase 61:3, 17, 22 62:13 63:17 purchased 61:8, 8, 13, 21 62:3, 6, 7 63:7, 13 purchasing 12:9 purpose 53:18 56:15 59:1 63:5 64:4 purposes 24:10 63:8 65:2 pursuant 1:14, 15 put 16:13 < Q > qualification 62:7 quarter 50:19 60:13 question 8:20 23:18 27:5 28:1 34:20 35:24 39:23, 24 40:3, 10, 12, 15 43:23 49:17 51:4 57:6 58:16 59:16 63:3 64:9 65:7 questioning 28:15 questions 28:6, 11 60:1 64:6 65:2 </p>	<p> Quinn 22:22, 24 23:4, 10 30:5 40:19 42:19 55:14 < R > R00843 59:18 read 60:8 68:10 really 48:3, 8 50:14 reason 11:8 15:20 25:21 28:14 50:14 66:1 recall 15:17 17:12, 14, 15, 16, 23 18:2 21:4 31:10 46:9, 11, 12 50:7 51:12, 18 52:5, 7, 10, 16, 23 53:10, 13 55:2, 3 57:2 60:14 65:16 receive 64:23 recommended 10:22 recommends 48:5 record 37:16 38:16 59:8, 18 65:2 68:14 records 20:13 21:4 38:23 reduced 69:12 referred 37:24 referring 35:18 52:18, 19 60:15 reflect 26:14 reflected 37:11 regarding 29:12 39:17 49:23 regardless 44:1 region 64:17 regular 27:1, 10 64:23 regularly 27:12 reimburse 55:23 relate 40:1 related 13:16 18:10 27:23, 24 29:5 30:4 70:2 relation 50:16 relationship 12:7 14:4 relative 48:17 relevant 20:4 </p>
---	---	--	--

remember 33:15 54:17 Repeat 28:1 rephrase 28:12 34:20 40:14 rephrased 40:11 replaced 12:12, 16 Reporter 1:19 69:5 representatives 17:21 reproduced 70:9 request 45:20 required 51:16 requirement 30:18 reserve 65:4 67:14 resigned 13:4, 5 45:9 respect 17:10 28:22 30:13, 23 55:16 respective 67:11 responsibilities 8:17, 22 13:13 14:1, 12 44:22 responsibility 44:21 70:8 responsible 47:20 restate 40:12 RESTONE 68:7 Restonic 2:20, 21 6:12, 12, 13, 22, 24 7:9, 11, 12, 15, 17, 22, 24 8:1, 5, 9, 18, 18, 23 9:1, 2, 17, 18, 19 10:14, 21, 23 11:5, 6, 7, 7, 16, 19 12:12, 21 13:3, 12, 14, 20, 23, 24 14:4, 12, 24 15:3, 9 19:19, 19 21:2, 6, 8, 9, 13, 14, 17, 18, 22 22:6, 12, 13, 17, 20 23:1, 5, 18, 20, 23 24:3, 23 26:2, 6, 6, 23 27:2, 3, 7, 7, 15, 20 29:5, 12 30:14, 14, 20, 21, 23 31:4 36:2, 13 37:3, 3, 21 38:7, 11, 13 39:9, 10, 16 40:17 41:2, 10, 20 42:14, 15 44:19 45:8, 14 47:5 48:6, 17 49:14, 15, 19 50:17 51:2, 17 53:16 54:12 55:23 56:13, 15 57:4, 5, 7, 8, 14, 14, 16, 19, 21 58:1, 24 59:19 60:19 61:2, 4, 4, 12, 14, 18, 20 62:2, 13, 19 63:6, 13, 17 64:1, 7, 11 65:15, 21 66:7, 7 Restonic's 29:1 59:2 retailers 64:16 retardancy 62:7 retardant 47:17 62:3, 20, 24 63:6 review 38:12 reviewed 47:16 revised 32:23 Richard 18:18 20:14 32:8 33:24 34:1 36:22 55:3, 5 63:3 Richards 3:23 Richard's 55:12 right 38:20 39:15 40:23 42:6 65:4 66:19 RMC 25:2 32:15 41:4, 5 Road 7:2 ROBERT 2:4 6:9 40:20 Robins 4:12 11:3, 12, 17, 22 12:4, 8 17:18 18:21, 23, 24 20:18 32:4 33:10 36:8 53:7 55:1 58:1 62:18 63:15, 16 Robinson 20:21 58:7, 11, 12, 21 role 9:4 12:13, 21 13:11, 17, 23 14:11 15:8 23:2 36:1, 9, 12 38:15 39:2, 14 41:20 48:4 49:13, 16 51:17 roles 8:17, 22 13:13 Rosemont 52:11 Royal 3:10 6:10 20:9 Rules 1:15 run 20:3 RUSSO 1:13 5:3 6:2, 16 59:9 60:10 66:15 68:10, 19 < S > SAITH 67:15 sake 11:5 sales 18:9, 18, 22 33:21 44:18 45:7 SALKOWSKI 2:3, 4 5:4 6:7, 9 40:13 59:8, 22 65:1 67:1, 13 samples 63:19 Sanders 42:14 sat 21:20 saw 9:24 43:22 saying 28:9 says 38:21, 24 60:9 schedule 25:11, 15 scheduled 29:17 SE 2:6 seal 70:13 search 11:18 see 13:18 20:5 50:9 seen 20:12 21:4 26:9, 10 37:10 sell 58:14 selling 58:7 separate 11:9 21:11 September 51:20, 24 52:17 53:14 54:3 sequence 54:7 SERRITELLA 2:12 service 64:2 services 8:2 13:15, 16, 18 18:4 39:15 48:7 61:8, 9, 10 set 25:11 34:8, 9 70:12 share 21:1 shareholder 20:5, 12, 15 21:1 30:15, 17, 19, 24 31:13 33:6 shareholders 19:21, 24 20:1, 8, 11, 19 21:6 30:13 31:11, 12 32:11, 12 47:7 sheets 68:16 shipped 63:21, 22 short 59:7 Shorthand 1:19 69:5, 13, 16 show 35:15 50:22 59:9, 17 showroom 61:24 63:19 shuttle 54:9 signed 38:22 70:6 Silverline 4:11 20:18 62:18 similar 18:17 47:12 Simply 18:13 sir 6:8, 21 7:4, 14 8:12 11:5 14:18 15:12 16:8 19:17 22:15 25:7 26:18 29:6 33:1 39:12 40:15 47:11, 24 51:18 52:10 57:3 59:23 60:5 61:2 65:1 sit 22:5 24:18 56:2, 5 sits 21:16 47:23 situations 57:22, 24 six 42:12 44:5 45:23 Sleep 3:10 6:10 14:13, 15, 16, 19, 23 15:8, 10, 22 16:19, 21 19:1, 5, 14 20:24 42:17 50:16, 24 51:2, 8, 10, 14 53:3 58:6, 11, 14 60:2, 7 65:10 66:1,

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

8	substantive 65:5	thereof 70:4	Tree 33:2 34:23
SMITH 3:3	suit 70:3	thing 28:21 61:22	51:21 52:1
Sofitel 15:18, 24	Suite 2:16 3:6 7:2	things 45:6	tried 38:1
17:11 52:11	support 14:23, 24	think 8:14 18:3	true 68:13 69:15
sold 62:18, 23	15:7 49:16, 19, 20,	19:4, 9 21:24	truth 69:9
Solutions 16:9, 17,	21 51:13	33:16 45:8 48:1	try 28:11 50:21
22, 24 17:1, 5	sure 8:20 9:6, 15	49:1, 8 51:21 52:5	turn 56:16
sorry 48:14 49:4	27:5 33:14 35:24	54:20, 22 61:23	twice 28:9
53:11 55:9	49:9, 17 64:22	65:11, 24	Twain 42:15
sound 50:20	surrounding 65:3	THOMAS 3:4	two 7:20 8:13
sounds 15:19	sworn 6:1, 4 68:22	thought 52:17, 18	11:2, 9 17:21 19:3
speak 31:2	69:9	three 39:14 43:14	21:10 22:16 24:10
specific 29:9 33:9	Symphony 6:19	53:21 54:5, 6 63:8,	25:14 27:13 42:2
64:20		16	43:19 45:4, 6, 12,
specifically 20:2	< T >	time 24:3, 22	13, 15 46:10 48:18
spoke 41:12 47:1,	table 28:19, 20	29:16 34:19, 19	49:5 66:21
3 51:15 56:19	take 28:13, 15	35:8, 17 37:13, 20,	type 8:8 9:21
spring 9:16 10:2, 3,	35:14 59:5	24, 24 41:5 43:8	12:6 14:23 15:6, 7
5, 10	taken 1:18 45:24	47:5, 6 50:8 51:3	16:18 17:8, 9
State 1:20 6:14	66:7 69:10, 17	58:13 59:4 64:21,	18:17 25:15 28:21
7:5 36:16 43:6, 11,	talk 19:17	21, 24, 24 65:15	29:8 34:18 40:1
17 45:24 46:6, 15,	talked 35:22	69:11	49:19 51:13 58:18
22 48:11, 15 51:11	talking 29:17	times 25:6, 8, 15	64:15
62:4, 10, 15, 20, 24	Tampa 10:8	34:6 43:1, 10, 14	typewritten 69:14
63:9, 10 64:12	telephone 23:16, 24	44:5 46:4, 8, 17, 20	typically 17:1
68:10 69:1, 6	25:2, 4, 5 26:16, 22	Today 21:15 38:19	
STATES 1:1, 16	32:2 34:19 35:3	45:2 59:12	< U >
8:10 35:1 68:1	50:4, 7	Tokarz 17:18 18:7	U.S 8:4
STEPHEN 1:13 5:3	telephonic 31:19,	33:19, 21 36:19	ultimate 56:6
6:2, 16 68:10, 19	20 32:11 59:19	42:16 45:18 46:1,	Ultimately 56:3
Steve 60:10	60:9	4 53:1 54:16	understand 8:20
Stevens 3:22, 23	telephonically 3:20	told 13:9 40:7	27:5 28:8 31:5
18:19 20:14, 15	4:9 43:3	65:24	35:24 39:13 40:10
32:8 33:24 36:22	tell 13:1 37:8 40:5	Tolman 13:10	41:8 49:17 66:16
42:19 55:3, 6 63:3,	63:17	Tom 3:13 11:3	understanding
15 66:18, 20, 24	telling 39:19	21:19 33:17 36:15	14:17, 19 18:4
stock 50:16	ten 59:6	50:15, 24 52:7	66:17
stop 36:6	term 39:16	53:5 54:23, 24	United 1:16 8:10
stopped 36:8, 12	terms 27:2 28:8	60:18 62:22	68:1
Streamlining 42:6	test 62:10	topic 29:20	updated 64:17
Street 2:6 4:6	testified 6:4	touched 51:21	use 11:6 62:3 63:8
strike 26:19 45:22	testify 69:9	Tower 2:5	usually 26:14 43:3
53:11	testimony 49:5	transcribed 69:14	
structure 50:13	68:14 69:12 70:11	transcript 68:11, 13	< V >
structured 19:20	testing 62:9	69:16	Vaguely 37:7
sublicensee 23:6	tests 62:4, 14, 20,	transcripts 70:7	various 15:1 26:8,
sublicensees 8:4	24 63:6	transition 26:3	21 35:1 39:7
sublicensing 13:20	Texas 4:7	50:18 60:11	46:24 47:2 56:18
SUBSCRIBED 68:22	Thank 67:12, 13	travel 55:24	
		traveled 30:8	

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

Vegas 34:13, 15 35:11, 15, 15 62:1 63:20, 22, 24 vendors 54:7 venture 43:4 vice 44:18 vision 32:23 visit 36:12 visited 36:8, 15, 20, 23 50:9 voice 58:17 VP 45:7 vs 68:6 < W > Wabash 1:21 2:15 Walker 42:13 want 6:16 19:17 20:3 28:18 29:8 59:4, 14 wanted 53:23 WARREN 2:12 way 14:8 39:19 57:12 70:2, 3 website 64:14, 15 well 6:12 26:10 28:17 39:24 61:9 64:23 65:16 went 50:5 65:16 we've 35:8, 10 39:8 56:19 62:6 WHEREOF 70:11 WITNESS 5:2 6:1, 3 40:12 60:4 69:8, 12 word 9:9 11:6 wording 58:18 words 65:21 work 7:6 9:24 10:3 16:12 17:5 47:13 53:23 57:16, 20 58:2 60:10, 18 worked 10:4 57:4, 8 working 16:5 17:22 19:8 47:17 works 18:8, 12, 16, 21 66:20 world 34:13	writing 69:13 < Y > Yeah 54:21 year 12:24 15:16 17:11 21:24 22:1 25:8, 12, 16, 18 27:16 34:6 44:11 47:15 York 24:6, 9, 11, 24 young 44:17 < Z > ZARCO 2:3 zip 64:16		
--	--	--	--